Implementing the Third Renewable Energy Directive in the Netherlands: Challenges and Opportunities for Offshore Wind Energy

ECOAMARE - Work package 8

Utrecht University

Authors: Alessio Devis & Dr Anne Lansink

Affiliations: Utrecht Centre for Water, Ocean and Sustainability Law (UCWOSL) & Netherlands Institute for the Law of the Sea (NILOS)

Utrecht University

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Abbreviations

AA	Appropriate Assessment
CJEU	Court of Justice of the European Union
EIA	Environmental Impact Assessment
EU	European Union
IROPI	Imperative Reasons of Overriding Public Interest
MSFD	Marine Strategy Framework Directive
NECP	National Energy and Climate Plan
RAA	Renewables Acceleration Area
RED III	Third Renewable Energy Directive
SEA	Strategic Environmental Assessment
TFEU	Treaty on the Functioning of the European Union
TSO	Transmission System Operator
WIN	North Sea Wind Energy Infrastructure Plan

Translations

Laws & Decrees

Laws

Environment and Planning Act	*Omgevingswet, 23-03-2016, Stb. 2016, 156*
Electricity Act	*Elektriciteitswet, 02-07-1998, Stb. 1998, 427*
Offshore Wind Energy Act	*Wet Windenergie op zee, 24-06-2015, Stb. 2015, 261*
Environmental Management Act	*Wet Milieubeheer, 13-06-1979, Stb. 1979, 442.*
Provincial Division of the Wadden Sea Act	*Wet tot provinciale indeling van de Waddenzee, 08-11-1980, Stb. 1980, 670*
Municipal Division of the Wadden Sea Act	*Wet tot gemeentelijke indeling van de Waddenzee, 12-12-1985, Stb. 1985, 648*
Coastal Boundaries Act	*Wet houdende regeling provincie- en gemeentegrenzen langs de Noordzeekust van de gemeente Den Helder tot en met de gemeente Sluis en wijziging van de Financiële-Verhoudingswet 1984, 2-11-1990, Stb. 1990, 553*
General Administrative Law Act	*Algemene wet bestuursrecht, 04-06-1992, Stb. 1992, 315*
Spatial Planning Act (expired)	*Wet ruimtelijke ordening, 20-10-2006, Stb. 2006, 566*
Nature Conservation Act (expired)	*Wet natuurbescherming, 16-12-2015, Stb. 2016, 34*

Decrees

Environment and Planning Decree	*Omgevingsbesluit, 03-07-2018, Stb. 2018, 290*
Living Environment Activities Decree	*Besluit activiteiten leefomgeving, 03-07-2018, Stb. 2018, 293*
Living Environment Quality Decree	*Besluit kwaliteit leefomgeving, 03-07-2018, Stb. 2018, 292*
EIA Decree (expired)	*Besluit milieu-effectrapportage, 20-05-1987, Stb. 1987, 278*

Parcel Decisions

Parcel Decision Nederwiek (South) I-A	*Kavelbesluit kavel I-A windenergiebied Nederwiek (zuid), Staatscourant nr. 13171, 16 mei 2025.*
Parcel Decision Ijmuiden Ver Beta	*'Kavelbesluit kavel Beta windenergiegebied IJmuiden Ver', Staatscourant nr. 35270, 28 December 2023.*
Parcel Decision IJmuiden Ver Alpha	*'Kavelbesluit kavel Alpha windenergiegebied IJmuiden Ver', Staatscourant nr. 35269, 28 December 2023.*
Parcel Decision HK (West) VII	*'Kavelbesluit VII windenergiegebied Hollandse Kust (west)', Staatscourant 2022 nr. 3428, 25 Februari 2022.*
Parcel Decision HK (West) VI	*'Kavelbesluit VI windenergiegebied Hollandse Kust (west)', Staatscourant 2022 nr. 4381, 25 Februari 2022.*
Parcel Decision HK (North) V	*'Kavelbesluit V windenergiegebied Hollandse Kust (noord)', Staatscourant 2019 nr. 24545, 9 May 2019.*
Parcel Decision HK (South) IV	*'Kavelbesluit IV windenergiegebied Hollandse Kust (zuid)', Staatscourant nr. 2497, 19 Januari 2018.*
Parcel Decision HK (South) III	*'Kavelbesluit III windenergiegebied Hollandse Kust (zuid)', Staatscourant nr. 2543, 19 Januari 2018.*
Parcel Decision HK (South) II	*'Kavelbesluit II windenergiegebied Hollandse Kust (zuid)', Staatscourant nr. 67120, 16 December 2016.*
Parcel Decision HK (South) I	*'Kavelbesluit I windenergiegebied Hollandse Kust (zuid)', Staatscourant 2016 nr. 67082, 16 December 2016.*
Parcel Decision Borssele V	*'Kavelbesluit V windenergiegebied Borssele', Staatscourant nr. 14551, 8 April 2016.*

Parcel Decision Borssele IV	*'Kavelbesluit IV windenergiegebied Borssele', Staatscourant nr. 14545, 8 April 2016.*
Parcel Decision Borssele III	*'Kavelbesluit III windenergiegebied Borssele', Staatscourant nr. 14523, 8 April 2016.*
Parcel Decision Borssele II	*'Kavelbesluit II windenergiegebied Borssele', Staatscourant nr. 14513, 8 April 2016.*
Parcel Decision Borssele I	*'Kavelbesluit I windenergiegebied Borssele', Staatscourant nr. 14428, 8 April 2016.*

Policy and Bills

Bill for implementing RED III	*Conceptwetsvoorstel RED III*
Draft Memorandum on Scope and Level of Detail for Partial Revision of the NSP 2022-2027	*Concept Notitie Reikwijdte en Detailniveau Partiële Herziening PNZ 2022-2027*
Climate Agreement	*Klimaatakkoord, Kamerstuk 32 813, nr. 342*
Dutch Environmental Vision	*Nationale Omgevingsvisie (NOVI), Kamerstuk 34682, nr. 92*
Energie Nota	*Klimaatnota en Energienota, Kamerstuk 32 813, nr. 1416*
Explanatory Memorandum to the Bill for implementing RED III	*Memorie van Toelichting RED III*
National Energy System Plan	*Nationaal plan energiesysteem, Kamerstuk 29826 nr. 217*
National Water Programme 2022-2027	*Structuurvisie Nationaal Water Programma, Kamerstuk 35325 nr. 5, 'Nationaal Water Programma 2022-2027' Bijlage 1022238*
North Sea Wind Energy Infrastructure Plan	*Ministerie van Klimaat en Groene Groe 'Windenergie Infrastructuurplan Noordzee' (Juni 2025)*
North Sea Programme 2022-2027	*Structuurvisie Nationaal Water Programma, Kamerstuk 35325 nr. 5, 'Programma Noordzee 2022-2027', Bijlage Bijlage 1022234*
Integrated National Energy and Climate Plan	*Integraal Nationaal Plan Energie en Klimaat (INEK), Kamerstuk 32 813, nr. 1407*
Spatial Planning Memorandum	*Nota Ruimte, Kamerstuk 29 435, nr. 269*
Structural Vision for Offshore Wind Energy	*Structuurvisie Windenergie op Zee (SV WoZ), Kamerstuk 33 561, nr 87.*

Others

EIA Commission	*MER Commissie*
Integration Plan	*Inpassingsplan*
Netherlands Enterprise Agency	*Rijksdienst voor Ondernemend Nederland (RVO)*
Parcel Decision	*Kavelbesluit*
Project Decision	*Project besluit*

EU Instruments & Case Law

EU Instruments

Birds Directive	Directive 2009/147/EC of 30 November 2009 on the conservation of wild birds, OJL 20/7.
EIA Directive	Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, OJL 26/1.
European Climate Law	Regulation (EU) 2021/1119 of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999, OJL 243/1.
Habitats Directive	Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJL 206/7.
Marine Strategy Framework Directive	Directive 2008/56/EC of 17 June 2008 establishing a framework for community action in the field of marine environmental policy, OJL 164/19.
MSP Directive	Directive 2014/89/EU of 23 July 2014 establishing a framework for maritime spatial planning, OJL 257/135.
RED	Directive (EU) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources (as amended by Directive 2023/2413), OJL 328/82.
RED III	Directive (EU) 2023/2413 of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652, PE/36/2023/REV/2.
SEA Directive	Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, OJL 197/30
Water Framework Directive	Directive 2000/60/EC of 23 October 2000 establishing a framework for Community action in the field of water policy, OJL 327/1.
REPowerEU Plan	Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, 'REPowerEU Plan', COM(2022) 230 final

List of cases – CJEU

C-127/02 *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij* [2004] ECLI:EU:C:2004:482.
C-131/24 *Umweltorganisation VIRUS – Verein Projektwerkstatt für Umwelt und Soziales and Others* [2025] ECLI:EU:C:2025:714.
C-141/14 *European Commission v Republic of Bulgaria* [2016] ECLI:EU:C:2016:8.
C-142/16 *European Commission v Federal Republic of Germany* [2017] ECLI:EU:C:2017:301.
C-217/19 *European Commission v Republic of Finland* [2020] ECLI:EU:C:2020:291.
C-241/08 *European Commission v French Republic* [2010] ECLI:EU:C:2010:114.
C-252/85 *European Commission v French Republic* [1988] ECLI:EU:C:1988:202.
C-256/98 *European Commission v French Republic* [2000] ECLI:EU:C:2000:192.
C-293/17 *Coöperatie Mobilisation for the Environment UA and Vereniging Leefmilieu v College van gedeputeerde staten van Limburg and College van gedeputeerde staten van Gelderland (PAS)* [2018] ECLI:EU:C:2018:882.
C-304/05 *Commission of the European Communities v Italian Republic* [2007] ECLI:EU:C:2007:532.
C-323/17 *People Over Wind and Peter Sweetman v Coillte Teoranta* [2018] ECLI:EU:C:2018:244.
C-441/17 *European Commission v Republic of Poland (Białowieża Forest)* [2018] ECLI:EU:C:2018:255.
C-461/14 *European Commission v Kingdom of Spain* [2016] ECLI:EU:C:2016:895.
C-473/19 *Föreningen Skydda Skogen and Others v Länsstyrelsen i Västra Götalands län and Others* [2021] ECLI:EU:C:2021:166.
C-507/04 *Commission of the European Communities v Republic of Austria* [2007] ECLI:EU:C:2007:427.
C-538/09 *European Commission v Kingdom of Belgium* [2011] ECLI:EU:C:2011:349.
C-557/15 *European Commission v Republic of Malta* [2018] ECLI:EU:C:2018:477.
C-66/06 *Commission of the European Communities v Ireland* [2008] ECLI:EU:C:2008:637.
C-674/17 *Luonnonsuojeluyhdistys Tapiola Pohjois-Savo – Kainuu ry v Risto Mustonen and Others* [2019] ECLI:EU:C:2019:851.
C-721/21 *Eco Advocacy CLG v An Bord Pleanála* [2023] ECLI:EU:C:2023:477.

Executive Summary

This report examines the implementation of the third version of the Renewable Energy Directive, as revised by the Renewable Energy Directive (EU) 2023/2413 (RED III), in the Dutch part of the North Sea, and assesses its implications for offshore wind energy development. It analyses how RED III interacts with the existing Dutch legal and policy framework and identifies opportunities and constraints in accelerating offshore wind deployment. Three themes structure the analysis: a) the designation of Renewables Acceleration Areas (RAAs) and Infrastructure Areas; b) the streamlining of environmental assessments and the introduction of new legal presumptions; and c) the treatment of unforeseen adverse effects, including their potential monetary compensation.

RED III

At the EU level, RED III establishes a new legal architecture to harmonise and accelerate renewable energy deployment by amending Directive 2018/2001(RED). It sets a binding EU target of at least 42.5% renewable energy by 2030, with an aspirational goal of 45%, requiring significant acceleration of the energy transition. To this end, RED III streamlines, simplifies and shortens planning and permitting, distinguishing between general rules for all renewable energy developments and specific rules for RAAs and Infrastructure Areas.

The general rules introduce:

1) *Coordinated spatial mapping*, identifying potential and available domestic areas for renewable energy plants and related infrastructure;

2) *A presumption of compliance with Article 12(1) Habitats Directive and Article 5 Birds Directive*, treating killings or disturbances of protected species as non-deliberate, when necessary mitigation measures are implemented;

3) *A presumption of overriding public interest and of public health and safety*, facilitating derogations where plans or projects do not meet EU environmental obligations;

4) *Shorter permitting deadlines*, requiring offshore renewable energy projects to be authorised within three years, unless extraordinary circumstances justify delay.

RED III also introduces streamlined procedures for environmentally suitable “low-conflict areas”, namely Renewables Acceleration Areas (RAAs) and Infrastructure Areas. These involve:

1) *Planning obligations*, requiring Member States to designate suitable areas, thereby excluding environmentally sensitive areas (e.g., Natura 2000 areas), and to set targeted mitigation rules for developers;

2) *Simplified environmental rules*, enabling project-level reliance on streamlined environmental assessments and presumptions of compliance with nature conservation obligations;

3) *Shorter permitting time limits*, mandating completion of permitting for offshore projects in RAAs within two years, unless extraordinary circumstances apply.

Implementation in the Dutch part of the North Sea

In the Netherlands, offshore renewable energy development already operates under a highly centralised and streamlined framework based on two main legal instruments: the Offshore Wind Energy Act, which provides a coordinated one-stop-shop procedure for offshore wind farm planning and permitting, and the Environment and Planning Act, which governs the project procedure for nationally

significant projects such as offshore grid and storage infrastructure. This framework is complemented by policy documents, including the North Sea Programme 2022-2027 and the North Sea Wind Energy Infrastructure Plan, which set long-term ambitions and their operationalisation. Despite this high degree of streamlining, the current system may not meet RED III's new permitting deadlines; procedures would need to be shortened by at least 1.5 years, indicating the need for further procedural acceleration without compromising environmental safeguards.

Part 2 of the report therefore evaluates possible implementation pathways and three main options for designating RAAs and Infrastructure Areas in the Dutch part of the North Sea. It concludes that in order to designate RAAs in the Dutch part of the North Sea, it first has to be examined whether the strict legal requirements under RED III are met. For instance, offshore wind areas may fail to qualify as 'low-conflict' zones, if they overlap with major migratory routes of birds and marine mammals. Furthermore, the permitting procedure would have to be shortened by roughly 2.5 years. The report also examines the potential designation of Infrastructure Areas to support long-term planning of grid, storage and hydrogen facilities, although Dutch permitting for such projects is already largely aligned with RED III.

Part 3 assesses the challenges and opportunities for accelerating environmental procedures in the Dutch part of the North Sea under RED III, focusing on: streamlined assessment procedures, new nature conservation presumptions, and the mechanism for monetary compensation.

Streamlining Environmental Assessments

According to the EU Commission, environmental assessments are among the main barriers to accelerating renewable energy deployment. In the Netherlands, EIAs and Appropriate Assessments (AAs) for offshore wind energy projects are conducted by the competent authority, thereby alleviating upfront economic risks for investors.

Streamlining environmental assessment seeks to identify and address (by means of mitigation measures) likely significant adverse effects at a strategic level, thereby minimising unforeseen effects during project-level decision-making. RED III therefore encourages Member States to front-load environmental assessments so that project-level permitting can rely on predefined mitigation conditions.

Streamlined assessments require early, thorough planning to pre-structure permitting, enabling authorisation by applying pre-established conditions. RED III allows Member States to designate, in advance and at a strategic level, the locations and mitigation conditions under which future projects can be authorised almost automatically from an environmental perspective. In the Netherlands, parcel decisions already partly perform this function. RED III suggests elevating this practice to the strategic planning level, so that project-level assessments focus on screening unforeseen effects. In the Netherlands, the North Sea Programme could be used for this. Within RAAs or Infrastructure Areas, parcel decisions would therefore be limited to screening for unforeseen and transboundary effects, provided the mitigation rules set out in the relevant RAA or Infrastructure Area plan are implemented. In such cases, parcel decisions would in principle be exempt from full EIA and AA requirements unless screening reveals unforeseen effects that cannot be mitigated.

However, streamlining depends on two conditions:

1) *Location requirement* – The designation of RAAs has to comply with the strict requirements of the directive (see above).

2) *Mitigation requirement* – RAA plans must include binding mitigation measures to ensure compliance with Natura 2000 and species protection obligations.

Two bottlenecks currently limit streamlining of offshore wind energy development in the Dutch part of the North Sea. First, it is uncertain whether all designated wind areas in the North Sea Programme 2022-2027 satisfy the location requirement. Although they do not overlap with Natura 2000 sites, past SEAs and AAs have not demonstrated the absence of significant adverse effects, and it is not fully established that they do not overlap with major migratory routes. Second, the mitigation measures in parcel decisions may not meet the mitigation requirement. Under a strict interpretation of Article 15c(1)(b) RED, measures would need to ensure that no individual of a protected species is killed; a more lenient interpretation would require only that the population status is not negatively affected. It is unclear which interpretation will eventually prevail.

Presumptions

In line with streamlined permitting procedures, RED III introduces several presumptions enabling projects to be authorised by default through simplified compliance with nature conservation obligations, thereby permitting their authorisation by default. While essential within RAAs and Infrastructure Areas, most presumptions also apply to renewable energy projects outside these areas, provided the necessary or appropriate mitigation measures are adopted.

The report identifies three main presumptions:

First, projects located within RAAs are presumed to comply with *Article 6(2) of the Habitats Directive* if they implement the appropriate mitigation measures.

Second, projects within or outside RAAs are presumed to comply with *Articles 12(1) of the Habitats Directive and 5(1) of the Birds Directives* (prohibiting deliberate killing and disturbance of protected species), provided that they implement the appropriate or necessary mitigation measures. The difference lies in the source of the mitigation obligations: projects within RAAs must apply the measures set out in the relevant RAA plan, while projects outside RAAs must apply necessary mitigation measures determined on an *ad hoc* basis.

In both cases, the presumption does release Member States from their overarching obligations: they simplify project-level obligations while the Member States remain responsible for meeting these obligations at the strategic level. Their application presupposes that RAA plans contain effective mitigation rules ensuring proportionate and timely compliance with Articles 6(2) and Article 12(1) of [the Habitats Directive and] Article 5 of [the Birds Directive].'[1] It should be noted, however, that an alternative interpretation exists under which certain RED III provisions may operate as *lex specialis* in relation to the Habitats Directive and the Birds Directive. Under this interpretation, presumptions such as non-deliberate killing may narrow the scope of Member State obligations under the Nature Directives. Although this divergence does not alter the report's analytical framework, it clarifies that, in specific procedural contexts, RED III may constitute a derogation regime rather than facilitating a mere procedural streamlining.

Third, RED III establishes a broad presumption that renewable energy plans and projects must be carried out for *imperative reasons of overriding public interests (IROPI) and for public health and safety* until climate neutrality is achieved. This facilitates derogations for plans and projects likely to significantly affect Natura 2000 sites or cause deliberate killing or disturbance of protected species. Additionally, Member States may limit the presumption to specific territories, technologies, or project

[1] RED, Art 15c(1)(b), first paragraph.

types. The EU Commission views it as a tool to accelerate renewable energy deployment, particularly in RAAs.

The application of these three presumptions raises several challenges in the Dutch part of the North Sea:

1) *Article 6(2) presumption*: It may exacerbate situations where a plan or project, despite a compliant Article 6(3) AA, proves likely to contribute to the deterioration of a Natura 2000 site. Unless rebutted, a project could proceed in such circumstances. The Member State would then presumably need to undertake other actions to ensure overall compliance with Article 6(2).

2) *Presumption of non-deliberateness of killing or disturbance:* the difficulty lies in identifying mitigation measures for projects located within RAAs that could ensure compliance with these prohibitions in the first place. Current protective measures set out in Dutch parcel decisions do not strive to ensure that the prohibition of killing or disturbance is respected; the authorities accept by default that these prohibitions are considered to be violated as soon as one specimen is killed and, therefore, focus on limiting the impacts on the conservation status of that species to a level that would be acceptable for the grating of derogations under articles 16 HD and 9 BD. That would be enough following the more lenient interpretation of these provisions, but it would not be enough if the stricter interpretation had to be followed. In any event, the effect of such a presumption will most likely be limited in practice. Currently, derogations in relation to species protection law are systematically granted in parcel decisions on the condition that the project implements the identified mitigation measures.

Unforeseen adverse effects and (Monetary) Compensation

RED III introduces a new mechanism that, in limited circumstances, allows financial compensation for significant adverse environmental effects. Recognising that not all impacts can be foreseen at the strategic level, the Directive provides that unforeseen effects should not disproportionately hinder permitting in previously assessed low-conflict areas. Where mitigation cannot prevent or minimise such effects, and no other proportionate compensatory measures are available, financial compensation may be used as a last resort.

However, this mechanism is subject to three major limitations:

1) *Scope* – It applies only to (i) projects located within RAAs that have been explicitly exempted from subsequent EIAs and AAs, despite causing unforeseen significant adverse effects, and (ii) grid and storage projects located within Infrastructure Areas.

2) *Last resort* – Compensation is allowed only when no proportionate mitigation or alternative compensatory measures are available.

3) *Purpose* – Compensation may address either significant deterioration of a Natura 2000 site or the killing or disturbance of protected species, but in the latter case, however, it must still aim to ensure or improve the conservation status of the affected species.

Although this mechanism could offer flexibility, it presents a significant practical challenge: how to determine the appropriate compensation measures – especially monetary compensation – when project effects have not been fully assessed in an EIA and an AA? Furthermore, clear criteria, methodologies and oversight will be essential to ensure compliance with EU environmental law in such cases.

Recommendations

1) Identify and exclude major migratory routes, including species-specific offshore migration corridors whose ecological relevance may persist despite broader land-based migration patterns, before designating low-conflict areas, to ensure compliance with RED III's location criteria and reduce the risk of unforeseen impacts later in the process.

2) Integrate mitigation measures systematically into strategic plans (e.g. North Sea Programme) as standard features so that significant adverse effects are excluded early and project-level screening can rely on predefined, robust mitigation measures.

3) Limit the application of the IROPI and the public health and safety presumption to renewable energy projects whose ecological impact remains reversible and where alternative solutions have been meaningfully assessed to ensure that presumptions do not undermine Member State obligations under the Habitats and Birds Directives.

4) Operationalise monetary compensation by explicitly applying existing Commission guidance, including criteria on effectiveness, feasibility, proportionality, ecological equivalence, and long-term implementation, and by developing a methodology to calculate monetary amounts for impacts not previously assessed through EIA/AA measures. Monetary compensation must be linked to concrete ecological outcomes consistent with CJEU compensatory-measures doctrine.

5) Assign one or more legally independent third parties to design, implement and monitor compensatory measures, including species-protection programmes, to ensure transparency. Establish a clear oversight and audit mechanism for the monetary compensation system to ensure that compensation genuinely maintains or improves conservation status.

Introduction

Directive (EU) 2023/2413 — also known as the Third Renewable Energy Directive (RED III) — raises the EU's renewable energy targets for 2030 by amending the Renewable Energy Directive 2018/200 (RED). Whereas the directive aimed initially for a 32% share of renewable energy at the European Union (EU) level, the EU is now legally committed to at least achieving 42.5%, with an aspirational target of 45% by 2030.[2]

These higher ambitions are essential to meeting the EU's climate commitments.[3] Under the European Climate Law, which operationalises the Paris Agreement, the EU must reduce its greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels and achieve climate neutrality by 2050.[4] Since more than 75% of these emissions originate from the energy sector, a large-scale transition to renewable energy is indispensable.[5] The new targets were furthermore motivated by Russia's invasion of Ukraine in 2022, which underscored the need to reduce dependence on Russian fossil fuels and expand the EU's domestic renewable energy capacity.[6]

Although these targets apply at the EU level, each Member State is expected to contribute.[7] According to its updated National Climate and Energy Plan, the Netherlands aims to reach at least a 39% share of renewable energy by 2030, and ideally 42%, in support of the overall EU targets.[8] Achieving this would require doubling the share of renewable energy consumption compared to 2024 levels.[9]

Offshore Wind Energy in the Netherlands

Offshore wind energy is expected to play a central role in meeting both the EU and the Dutch renewable energy targets. It is considered a mature and cost-effective technology that is capable of generating large volumes of electricity.[10] The Netherlands furthermore has limited land availability and a dense population, whilst at the same time it has extensive maritime zones in the North Sea. This sea is characterised by shallow waters and strong winds, which make it especially suitable for the

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[2] RED, Art 3(1).
[3] Directive (EU) 2023/2413, Recitals 1-3.
[4] European Climate Law, Art 2(1) and 4(1). This ambition has been copied into Dutch law via Article 2 of the Dutch Climate Law. The Netherlands even aspires to achieve a 60% reduction by 2030, instead of 55%, through an over-programming of measures to increase the chances of meeting the set targets: see Ministry of Economic Affairs and Climate Policy, 'Integraal Nationaal Plan Energie en Klimaat'(2024) (INEK), pp. 12 and 26.
[5] Directive (EU) 2023/2413, Recital 2.
[6] See European Commission, 'REPowerEU Plan' COM(2022) 230 final. With regard to the Dutch policy, see Netherlands Enterprise Agency, 'Structural Vision for Offshore Wind Energy' (2025), pp. 55-56. Energy security is also listed among the policy aspirations in Ministry of the Interior and Kingdom Relations, 'Voorontwerp Nota Ruimte', p. 39. For more legal context, see Alessio Devis 'Change of Paradigm in EU Environmental Law: Does the Climate Crisis Now 'Override' the Biodiversity Crisis?' (2024) European Law Blog, https://doi.org/10.21428/9885764c.eaa4248f.
[7] RED, Art 3(2).
[8] INEK (n 4), p. 29.
[9] Centraal Bureau voor Statistiek, 'Consumption of Energy from Renewable Sources Rises to 20 percent' (6 June 2025), https://www.cbs.nl/en-gb/news/2025/23/consumption-of-energy-from-renewable-sources-rises-to-20-percent.
[10] European Commission, 'An EU Strategy to Harness the Potential of Offshore Renewable Energy for a Climate Neutral Future' COM(2020) 741 final; Ministry of Interior and Kingdom Relations, 'Nationale Omgevingsvisie (NOVI)' (2020) (Dutch Environmental Vision), p. 79.

generation of wind energy.[11] The proximity of major industrial users along the Dutch coast could furthermore enable the direct delivery of electricity to them, thereby easing pressure on the onshore grid.[12]

Several national policy documents, including the Structural Vision for Offshore Wind Energy and the 2019 Dutch Climate Agreement, place offshore wind at the core of the Dutch energy transition.[13] In absolute terms, the EU aims to install 60 GW of offshore wind energy capacity by 2030 and 300 GW by 2050, though these figures may rise to reflect RED III's new targets.[14] The Netherlands had initially planned to contribute 21 GW by 2030 and 50 GW by 2040.[15, 16] However, these targets have recently been delayed and revised downwards due to rising costs and slower industrial demand growth. The Netherlands now aims to have 21 GW of offshore wind electricity capacity installed by 2032 and 30 to 40 GW by 2040.[17] Despite these adjustments, this represents a substantial increase from the current installed capacity of approximately 4.5 GW in the Netherlands and 21 GW in the EU.[18]

The Need for Acceleration

Meeting these ambitious targets — particularly those for 2030 — requires a significant acceleration in renewable energy deployment. The European Commission has identified slow and complex permitting systems as a key obstacle for investors (although other market and infrastructural factors also play a significant role).[19] RED III aims to address this obstacle by simplifying and shortening the permit-granting procedures, especially as far as environmental assessments are concerned.[20]

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[11] See Dutch Environmental Vision (n 6), pp. 79-81.
[12] Ibid 81; see also Dutch Climate Agreement 2019, p. 159.
[13] Dutch Climate Agreement 2019, p. 159; Structural Vision for Offshore Wind Energy (n 6), p. 79. The draft successor of the Dutch Environmental Vision (n 6) reaffirms the prominent role of offshore wind energy, as does Ministry of Economic Affairs and Climate Policy, 'Nationaal Plan Energiesysteem' (the National Energy System Plan).
[14] European Commission (n 10).
[15] See INEK (n 4), p. 31; *Kamerstukken* II 2021-22 33 561, nr. 54, p. 3.
[16] Note that this also represents a significant share of the ambitions of the North Seas Energy Cooperation (NSEC) countries, which collaboratively plan to have an installed capacity of offshore wind energy of at least 260 by 2050, 'with intermediate targets of at least 76 GW by 2030 and 193 GW by 2040'. See NSEC, 'Joint Statement' (2022), https://energy.ec.europa.eu/topics/infrastructure/high-level-groups/north-seas-energy-cooperation_en.
[17] *Kamerstukken* II 2025 33 561, nr. 87.
[18] WindEurope, 'Wind Energy in Europe: 2024 Statistics and the Outlook for 2025-2030', https://windeurope.org/data/products/wind-energy-in-europe-2024-statistics-and-the-outlook-for-2025-2030/, p. 22; Rijksoverheid, 'Windenergie op zee', https://www.rijksoverheid.nl/onderwerpen/duurzame-energie/windenergie-op-zee.
[19] European Commission, 'Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency' COM(2022) 222 final.
[20] Directive (EU) 2023/2413, Recitals 5 and 20ff. See also Commission Directorate-General for Energy and others, *Technical Support for RES Policy Development and Implementation—Simplification of Permission and Administrative Procedures for RES Installations (RES Simplify)—Interim Report* (Publications Office of the European Union 2022). Postscript: Note that the European Commission has recently launched a proposal for even further amendments to achieve the necessary acceleration: European Commission, 'Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2018/2001, (EU) 2019/944, (EU) 2024/1788 as regards acceleration of permit-granting procedures' COM(2025) 1007 final.

Aim and Structure of the Report

This report examines the key opportunities and challenges associated with implementing RED III in the Netherlands, with a particular focus on the offshore wind energy sector. The report is divided into three parts:

1. *RED III* – this first section outlines how the Directive seeks to accelerate renewable energy deployment across the EU, focusing on planning, environmental streamlining, and permitting timelines.
2. *Implementation in the Dutch North Sea* – this second section then examines how the Netherlands currently plans and permits offshore wind energy projects, identifying existing alignment with RED III and exploring options for its implementation.
3. *Legal Challenges and Opportunities* – this third section subsequently evaluates the practical relevance of three mechanisms introduced by RED III (streamlined assessment procedures, nature conservation presumptions, financial compensation) for offshore renewable energy developments in the Dutch part of the North Sea.

Overall, this report argues that the current planning and permitting system for offshore wind energy in the Dutch part of the North Sea is unlikely to benefit substantially – at least in the short term - from the mechanisms introduced by RED III. Although procedural acceleration will remain necessary to meet RED III's binding time limits, the Directive's added value offshore is limited by the fact that Dutch offshore wind development already operates under highly centralised and streamlined procedures. While RED III may offer opportunities to refine and improve elements of this procedural framework, many of its new mechanisms, such as the streamlined environmental assessments, legal presumptions and monetary compensation tool, are subject to strict legal and ecological conditions that are not yet fully met in the Dutch practice. In particular, significant uncertainty persists regarding cumulative impacts of offshore wind and associated infrastructure, and data gaps remain concerning species-specific movement corridors at sea. Nevertheless, ongoing research and monitoring may reduce these uncertainties over time, and some of RED III's new instruments may become more operationally relevant. For now, however, the scope for further acceleration offshore is limited, even as the Netherlands must ensure timely permitting in order to comply with RED III's mandatory deadlines.

This report forms part of the ECOAMARE research project, which is an interdisciplinary project funded by the Dutch Research Council (NWO). The project examines how the expansion of offshore wind energy in the Dutch North Sea can be balanced with the interests of other users of the sea and the marine environment. This is the first of three reports produced by the project's legal research team (Work packages 8 and 9 – Utrecht University). The authors gratefully acknowledge the valuable input from Dr Nikolaos Giannopoulos, Prof. Dr Chris Backes and Prof. Dr Alex Oude Elferink.

Part 1. The Third Renewable Energy Directive (RED III)

Part 1 describes the legal changes introduced by RED III to accelerate the planning and permitting of renewable energy developments. These legal changes include new generally applicable rules (section 1.1), streamlined procedures for specific projects (section 1.2) and shorter time limits for permit-granting procedures (section 1.3).

1.1. General rules

RED III introduces new legal rules that apply generally to any renewable energy development. These new legal rules aim to harmonise planning and permitting procedures by setting clear and standard requirements for the Member States while clarifying how conflicting public interests must be balanced.[21] They include a coordinated mapping requirement, presumptions of non-deliberate killing and of overriding public interest, and shorter permitting-procedure [?] requirements.

Coordinated mapping

According to Article 15b of RED, Member States had to conduct a 'coordinated mapping' of their available domestic areas for the energy transition by 21 May 2025. This mapping aims to complement the national energy and climate plans by requiring Member States to translate their national renewable energy ambitions into concrete areas within their territory.[22]

Concretely, Member States had to identify the potential and available domestic areas required for the installation of renewable energy plants and the related infrastructure, such as grid and storage facilities. These areas must be sufficient to meet at least their national contributions towards the binding 2030 energy target of Article 3(1) of the Directive, ensuring that the share of energy from renewable sources in the Union's gross final consumption of energy is at least 42.5%.

To that end, Member States may use or build upon their existing spatial planning documents or plans. They must, at a minimum, take into account the energy production potential of the respective areas, the projected energy demand, and the availability of relevant energy infrastructure (including grids and storage) in the area, or otherwise the potential to create or upgrade such infrastructure. Paragraph 3 of Article 15b stresses that renewable energy projects must be compatible with pre-existing uses of the identified areas while favouring multiple uses. Additionally, the identified areas must be periodically reviewed and, where necessary, updated to stay aligned with the national energy and climate plans.

Presumption of non-deliberate killing or disturbance

Under Article 16b(2), a renewable energy project shall not be considered to deliberately kill or disturb species protected under Article 12(1) of the Habitats Directive and Article 5 of the Birds Directive, provided that its developer adopts the necessary mitigation measures.[23]

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[21] Directive (EU) 2023/2413, Recital 22.

[22] This includes territorial waters and the Exclusive Economic Zone (EEZ) in which Member States have sovereign rights in relation to the generation of renewable energy and jurisdiction with regard to the establishment and use of artificial islands, installations and structures. See UNCLOS, Art 56.

[23] Postscript: The European Commission has recently adopted a proposal to further amend the RED and remove this presumption for projects located outside RAAs. See European Commission, 'Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2018/2001, (EU) 2019/944, (EU) 2024/1788 as regards acceleration of permit-granting procedures' COM(2025) 1007 final.

This presumption aims to redefine the balance between species conservation and climate mitigation by softening the CJEU's strict interpretation of the two prohibitions. Previously, the CJEU held that an act was deemed to be deliberate if the operator intended, or at least accepted the possibility of, killing or disturbing a protected species.[24] The killing (and to a certain extent also the disturbance) of a single specimen sufficed for a breach to occur.[25] While this strict interpretation is followed by the Netherlands, it is not consistently applied across other Member States.[26] As a result, the presumption could play a role in harmonising the application of these prohibitions across the Member States while softening the interpretation of the CJEU specifically for impacts caused by renewable energy projects.

This presumption of non-deliberate killing and disturbance applies to all renewable energy projects provided that they have implemented relevant mitigation measures. It explicitly applies also to projects located outside Renewable Acceleration Areas (RAAs) under Article 16b(2) of RED. Additionally, and as explained below, a similar presumption applies within RAAs through which renewable energy projects are presumed to comply with various nature conservation obligations, including the prohibition to deliberately kill or disturb protected species.[27]

Presumption of overriding public interest and public health and safety

Under Article 16f, Member States shall ensure that renewable energy developments are presumed to be in the overriding public interest and serving public health and safety until climate neutrality has been achieved.[28]

The presumption aims to facilitate the granting of individual derogations when a plan or project is likely to cause significant adverse environmental effects and therefore its authorisation would not comply with certain environmental obligations under EU law, unless a derogation from them is granted. More precisely, it applies when balancing legal interests for the purpose of granting derogations under Articles 6(4) and 16(1)(c) of the Habitats Directive, Article 4(7) of the Water Framework Directive, and Article 9(1)(a) of the Birds Directive. However, it does not explicitly apply under Article 14 of the Marine Strategy Framework Directive.

However, for derogating from species protection requirements, this provision only becomes relevant in cases where necessary mitigation measures are not adopted or when prohibited acts other than

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[24] See e.g. case C-221/04 *Commission of the European Communities v Kingdom of Spain,* para 71. This threshold of conditional intent has also explicitly been accepted in Dutch case law, see e.g. ABRvS 3 July 2019, ECLI:NL:RVS:2019:2169, para 5.2 and the case law cited therein.

[25] With regard to the killing of individual specimens, see joined cases C-473/19 and C-474/19 *Föreningen Skydda Skogen and Others v Länsstyrelsen i Västra Götalands län and Others* paras 46-78. The "individual specimen approach" applies to the disturbance of species that are protected under the Habitats Directive too: see cases C-784/23 *Voore Mets and Lemeks Põlva* and joined cases C-473/19 and C-474/19 *Föreningen Skydda Skogen and Others v Länsstyrelsen i Västra Götalands län and Others*.

[26] See Sanne Akerboom and others, 'Wind energy projects and species protection law: a comparative analysis of the application of EU law in five Member States' (2019) 28 *European Energy and Environmental Law Review* 144.

[27] See the distinction between RED, Art 16b(2) and Art 15c(1)(b), paragraphs 1 and 3. In RAAs, the presumption is that projects are not in breach of Article 12(1) of the Habitats Directive and Article 5 of the Birds Directive, among others.

[28] RED, Art 16f. A plan or project that is in breach of certain EU environmental law obligations can only proceed or be authorised if a number of justificatory requirements, so-called derogation requirements, are met. One of these is that the plan or project serves one of the overriding interests that are listed in the relevant derogation provision, such as the protection of public health and safety or the protection of another overriding public interest.

killing and disturbance are performed outside RAAs, such as the destruction of breeding sites. If the necessary mitigation measures are adopted, projects will, due to Article 16b(2), already be complying with Article 12 of the Habitats Directive and Article 5 of the Birds Directive, thereby not requiring any derogations under these Directives.[29]

Shorter permit-granting procedures

To ensure that permit-granting procedures are accelerated in practice, RED III also sets maximum time limits for them (which could potentially be enforced via infringement procedures).[30] These procedures cover all necessary administrative permits for the construction, repowering and operation of renewable energy plants, including hybrid plants, heat pumps and co-located storage (both power and thermal).[31] They also include permits for grid connection and the integration of renewable energy into heating and cooling networks, as well as any required environmental assessments.[32] However, the duration of the permit-granting procedure does not include the time required to resolve related legal disputes or, where applicable, alternative dispute resolution processes.[33]

Ordinary permit-granting procedures shall not exceed three years for offshore renewable energy projects. Where duly justified on the grounds of extraordinary circumstances, including where they require extended periods needed for assessments under applicable Union environmental law, Member States may extend this period by up to six months.[34]

As explained below, however, RED III also introduces streamlined procedures in certain areas. These streamlined procedures are subject to shorter time limits (see Table 1 in Section 1.2).

1.2. Streamlined procedures

Second, RED III introduces a special regime for streamlined procedures. This regime involves designating special areas – Renewables Acceleration Areas and Infrastructure Areas – which benefit from simplified environmental rules and are subject to a shorter permitting procedure.

1.2.1. Planning obligations

Streamlined permit-granting procedures presuppose thorough planning to pre-structure the decision-making process, allowing permits to be granted simply by complying with pre-established conditions. In other words, RED III enables Member States to designate, in advance and at a strategic level, geographical and technological conditions under which future projects will be almost automatically authorised from an environmental perspective. Geographical conditions are set by designating

[29] RED Art 16b(2).
[30] Ibid 16a(1)-(2) and 16b(1).
[31] Ibid 16(1).
[32] Ibid.
[33] Ibid 16(8)(c).
[34] Ibid 16b(1).

Renewables Acceleration Areas and Infrastructure Areas. Technological conditions are set by establishing a mitigation rule book.[35] To ensure compliance with EU environmental laws, the plans setting these conditions are subject to an SEA and, where appropriate, an AA.

Designating RAAs

Under Article 15c, Member States *shall* ensure that competent authorities adopt one or more plans designating "Renewables Acceleration Areas" (RAAs). RAAs are a subset of the areas identified during the coordinated mapping, where significant environmental impacts are not expected, considering the specific type of renewable energy proposed.[36] Priority should be given to artificial and built environments. Additionally, environmentally sensitive areas must be excluded, including:

1) Natura 2000 sites, areas that have been designated under national protection schemes for nature and biodiversity conservation, and major bird and marine mammal migratory routes. What constitutes a major migratory route is not defined in the Directive;
2) Other areas that are identified through sensitivity mapping and other proportionate tools and datasets.[37]

Member States must also ensure public participation in the preparation of RAA designation plans.[38] The RAA plan(s) must be adopted by 21 February 2026 at the latest and they must be periodically reviewed, particularly following updates to the Member States' integrated national energy and climate plans (NECPs).[39]

Designating Infrastructure Areas

Under Article 15e(1), Member States may adopt one or more plans in which they designate Infrastructure Areas for the development of grid and storage projects. These areas are intended to support and complement RAAs, benefiting from similar simplified permitting procedures. Whilst the designation of RAAs is compulsory, the designation of Infrastructure Areas is not. Their designation must follow comparable environmental criteria: Infrastructure Areas should be located in areas where the development of grid and storage infrastructure is not expected to have significant environmental impacts, or where such impacts may be mitigated or, where not possible, compensated for.[40] Similar to RAAs, certain areas are excluded from designation:

1) For storage projects, Natura 2000 sites and nationally protected areas must be excluded.[41]
2) For grid projects, Natura 2000 sites and nationally protected areas must be avoided unless no proportionate alternatives exist, considering the site's specific conservation objectives.[42]

RED III therefore provides Member States with more flexibility in designating Infrastructure Areas than in designating RAAs.

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[35] RED, Art 15c(1).
[36] The European Commission has also explicitly stressed that renewable energy development outside these areas is still permitted: European Commission 'Guidance to Member States on good practices to speed up permit-granting procedures for renewable energy and related infrastructure projects' SWD(2024) 333 final.
[37] RED, Art 15c(1)(a)(ii)-(iii).
[38] Ibid 15d.
[39] Ibid Art 15c(3).
[40] Ibid 15e(1).
[41] Ibid 15e(1)(a).
[42] Ibid 15e(1)(b).

Mitigation rule book

Plans designating RAAs and Infrastructure Areas must include appropriate rules on effective mitigation measures to be adopted for project developments.[43] These rules must aim to avoid or, where not possible, significantly reduce environmental impacts and shall be tailored to the specificities of each area, the type of renewable energy technology, and the identified environmental impacts.[44]

SEA and AA

Finally, the plans designating RAAs and Infrastructure Areas must be subjected to a Strategic Environmental Assessment (SEA) and, where applicable, to an appropriate assessment (AA) pursuant to Article 6(3) of the Habitats Directive.[45] This appropriate assessment must be carried out when the RAA or Infrastructure Area plan is, either individually or in combination with other plans or projects, likely to have a significant effect on one or more Natura 2000 sites.[46]

1.2.2. Simplified environmental rules

Renewable energy projects which comply with the conditions that have been pre-established in RAA and Infrastructure Area plans are subject to two main simplifications: exemption from specific environmental assessment obligations and presumptions of compliance with various nature conservation obligations.

EIA and AA exemptions

Under Articles 15e(2) and 16a(3), projects located within RAAs or infrastructure Areas are exempted from the requirement to carry out an environmental impact assessment (EIA) and an appropriate assessment (AA) of their implications for Natura 2000 sites, provided they comply with the mitigation rules established in the plans mentioned above. However, this exception does not apply to projects that are likely to have significant transboundary environmental effects, or if a potentially affected Member State requests an assessment under Article 7 of the EIA Directive.[47]

Projects that have been exempted from the obligation to undergo an EIA and an AA are subject to a screening process.[48] The screening is limited to determining whether a project is highly likely to cause significant unforeseen adverse effects that were not identified during the SEA of the plan designating the RAA or infrastructure area, and that cannot be mitigated by the additional measures proposed by the developer either. The screening also serves to verify whether the project is likely to have significant transboundary environmental effects.[49] The screening must be completed within 45 days for projects located within RAAs, starting from the date the developer submits all relevant information for the assessment.[50] Screenings for projects that have a capacity below 150 kW or that are located within infrastructure areas must be completed within 30 days.[51] Following this screening, renewable energy projects are deemed to be tacitly authorised from an environmental perspective, unless the

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[43] Ibid Art 15c(1)(b) and 15e(1)(e).
[44] European Commission (n 36) and RED, Art 15c(1)(b).
[45] RED, Art 15c(2) and 15e(1)(d).
[46] Habitats Directive, Art 6(3).
[47] RED, Art 15e(2) and 16a(3).
[48] Ibid, Art 15e(3) and 16a(4).
[49] RED III, Recital 46, paragraph 2 and RED, Art 16a(4).
[50] RED, Art 16a(4), second paragraph.
[51] Ibid, Art 15e(3) and 16a(4), second paragraph.

competent authority adopts a duly motivated and evidence-supported decision to the contrary within the set deadline.[52]

Where the screening reveals highly likely significant effects that were not identified during the SEA or the AA at plan-level and which cannot be mitigated either by the measures found in the mitigation rulebook or by the mitigation measures suggested by the project developer, the project must, in principle, be made subject to an EIA and, where necessary, to an AA.[53] Nevertheless, RED III provides for two situations in which the exemption remains in effect.

1) Wind and solar photovoltaic projects: Member States may exempt wind and solar photovoltaic projects from such additional assessment in "justified circumstances", including to accelerate the deployment of renewable energy to meet the EU targets.[54] For these projects, the operator must adopt proportionate mitigation measures or, if such measures are unavailable, compensatory measures, which may consist of monetary compensation if no other proportionate measures are available.[55]
2) Infrastructure projects: projects that are located within Infrastructure Areas are, by default, exempted from the obligation to undergo any additional environmental assessments. Instead, developers are only required to implement proportionate mitigation measures or, if these are unavailable, compensatory measures, which may include monetary compensation where appropriate.[56]

Presumption of compliance

In RAAs, projects that comply with the mitigation rules established by the relevant plan shall be presumed not to be in breach of Articles 6(2) and 12(1) of the Habitats Directive, Article 5 of the Birds Directive and Article 4(1)(a)(i) of the Water Framework Directive.[57] They shall furthermore be presumed not to be in breach of the obligation to 'avoid deterioration and achieve good ecological status or good ecological potential' in accordance with Article 4(1)(a) of the Water Framework Directive.[58]

Grid and storage projects that are located within Infrastructure Areas only benefit from the general presumption of non-deliberate killing mentioned above.[59]

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[52] Ibid, Art 16a(5).
[53] Ibid, Art 16a(5). These assessments must be completed within six months (with an extension of up to six months being possible in duly justified exceptional cases).
[54] Ibid, Art 16a(5), paragraph 2.
[55] Ibid, Art 16a(5), paragraph 3: 'Where those adverse effects have an impact on species protection, the operator shall pay a monetary compensation for species protection programmes for the duration of the operation of the renewable energy plant in order to ensure or improve the conservation status of the species affected.'
[56] Ibid, Art 15e(4).
[57] RED, Art 15c(1)(b), paragraphs 1 and 3.
[58] Ibid.
[59] Ibid, Art 16b(2), first paragraph.

1.3. Shorter permit-granting procedures

Given their streamlined nature, permit-granting procedures within RAAs and Infrastructure Areas are subject to shorter maximum time limits. Table 1 outlines the time limits applicable to offshore projects in the different areas.[60]

Table 1. Shorter permit-granting procedures for offshore projects

Areas	≥ 150 kW		< 150 kW & repowering	
	Duration	Extension*	Duration	Extension*
Ordinary procedure & Infrastructure Areas	3 years	6 months	2 years	3 months
Renewables Acceleration Areas	2 years	6 months	12 months	6 months

*Where duly justified on the ground of extraordinary circumstances

Failure to comply with the above time limits would constitute a breach of RED, potentially triggering an infringement procedure under Article 258 of the Treaty on the Functioning of the European Union (TFEU).

[60] Ibid, Art 16a(1)-(2) and 16b(1).

Part 2. Implementing RED III in the Dutch North Sea

Part 2 first describes the planning and permitting system currently applied to renewable energy developments in the Dutch part of the North Sea (section 2.1) and then identifies different pathways for implementing RED III (section 2.2).

2.1. The Current Dutch Offshore Wind Planning and Permitting System

In the Netherlands, offshore renewable energy development is primarily regulated under the Offshore Wind Energy Act. Offshore wind farms are subject to a tailor-made planning and permitting regime. However, the cables through which the generated electricity is transmitted to shore are subject to a different regulatory regime.

This section first briefly describes the two main physical components of the offshore renewable energy system in the Netherlands (section 2.2.1) – offshore wind farms and the offshore electricity grid. It then explains how these two components are regulated. Offshore wind farms are subject to a tailor-made regime under the Offshore Wind Energy Act (section 2.2.2). In contrast, the offshore grid is subject to more general rules (section 2.2.3).

2.1.1. Components

The offshore wind energy system comprises two main components, which are subject to distinct regimes: offshore wind farms and the offshore electricity grid (see Figure 1).

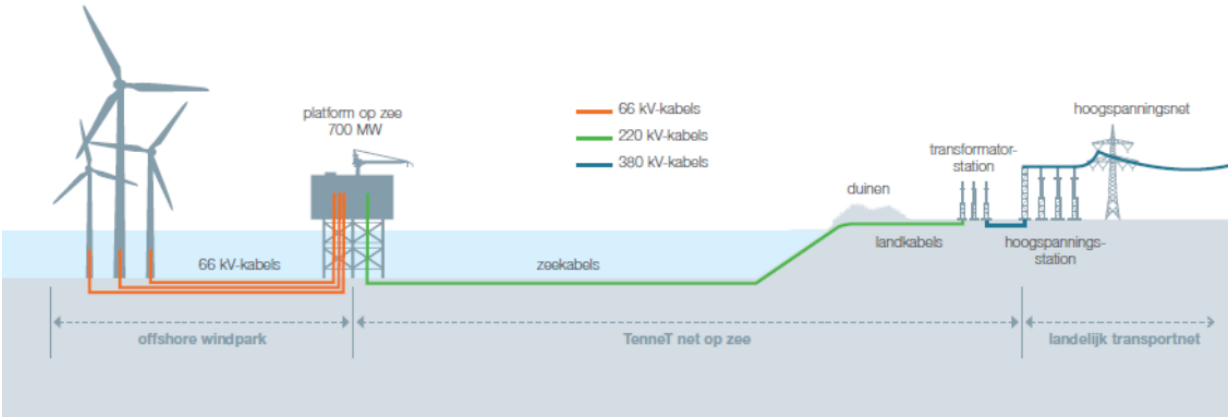

Figure 1. Offshore electricity grid components (Source: TenneT)

Offshore wind farm

The first component is the offshore wind farm, where the electricity is generated. Wind energy is the primary source of offshore renewable energy in the Netherlands. The offshore wind farm includes not only the turbines but also the cables that collect the generated electricity and transport it to a converter station. These cables are typically referred to as 'inter-array cables.' They are considered to constitute an integral part of the wind farm and are subject to the Offshore Wind Energy Act regime described below.[61]

[61] See Offshore Wind Energy Act, Art 1. See, e.g., Parcel Decision Nederwiek (South) I-A, p. 18.

Offshore electricity grid

The second component is the offshore electricity grid, through which electricity is transported to the nearest connection point on land. The offshore electricity grid typically consists of an offshore platform (converter station) and long transmission cables that extend to a connection point onshore.

At the converter station, the voltage is increased to filter out fluctuations in the electricity generated by the wind farm and to reduce energy losses during long-distance transmission.[62] At the connection point onshore, the electricity is once again converted to the correct voltage and quality for connection to the onshore electricity grid. Thus, whilst each offshore wind farm is located in a single geographical area, the grid infrastructure spans larger areas and it is subject to a different permitting regime.

2.1.2. Offshore Wind Farms Regulation

In the Netherlands, the planning and permitting of offshore wind farms are primarily regulated under the Offshore Wind Energy Act. Since 2015, the Offshore Wind Energy Act has provided a relatively centralised and streamlined procedure to balance the various interests in the North Sea. Prior to that, project developers competed in a decentralised first-come, first-served process to obtain the necessary permits and subsidies for the location of their choice.[63] Although this decentralised process led to the successful construction of four offshore wind farms,[64] it was also associated with high risks for investors and low space efficiency.[65]

The Offshore Wind Energy Act aimed to provide a centralised procedure addressing four main issues of the previous system:

1) Time efficiency – It avoids multiple permits from having to be granted and later amended due to technological advancements.[66]
2) Space efficiency – It designates the location of wind farms to maximise the use of available space for wind energy development, while enabling connections to an efficient offshore grid.[67]
3) Financial security – It reduces financial risks related to carrying out early environmental assessment, before permits are granted and subsidies secured.
4) Assessment of cumulative effects – It facilitates the assessment of the combined effects of multiple potential projects.[68]

This centralised procedure consists of three steps: (1) the designation of wind areas, (2) the parcel decision, and (3) tendering and permitting.

1) Wind Areas Designation

The first step is the designation of wind areas. Under the Offshore Wind Energy Act, an offshore wind farm can only be developed within an area designated in the National Water Programme.[69]

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[62] Higher voltage reduces energy losses during transmission over long distances. For the newest offshore wind farms, such as IJmuiden Ver, alternating current will be replaced by high-voltage direct current, utilising 525 kV export cables.
[63] *Kamerstukken* II, 2014-2015, 34 058, nr. 3, p. 5.
[64] These are *NoordzeeWind (OWEZ), Prinses Amaliawindpark, Luchterduinen,* and *Gemini*.
[65] See *Kamerstukken* II 2014-2015, 34 058, nr 3, p. 5-9.
[66] Ibid 8.
[67] *Kamerstukken* II 2014-2015, 34 058, nr 3, p. 7-8.
[68] Ibid 6-7.
[69] Offshore Wind Energy Act, Art 3 and Environment and Planning Act, Art 3.9(2)(e).

Wind areas are designated in the North Sea Programme, which is attached as an Annex to the National Water Programme, after a mandatory marine spatial planning process.[70] The 2022-2027 North Sea Programme designates the areas needed to realise the Dutch offshore wind ambitions for 2030[71] and identifies several search areas for wind energy development beyond this date.[72] The designated wind areas already exclude existing Natura 2000 sites and other protected areas. The partial revision of the North Sea Programme 2022-2027, along with the North Sea Programmes for 2028 and beyond, will designate additional wind energy areas for periods beyond 2030, where possible, based on the search areas identified in earlier versions of the Programme.[73]

Before the North Sea Programme is adopted or significantly revised, it must undergo a Strategic Environmental Assessment. If that adoption or revision is likely to result in a significant effect on a Natura 2000 site, an Appropriate Assessment must also be conducted.[74]

Compared to RED III, the designation of wind areas within the North Sea Programme is subjected to the same environmental assessments as plans designating RAAs. However, the North Sea Programme does not establish rules on mitigation measures to be adopted by project developers. These rules are currently laid down in parcel decisions instead (see section 2 below).

2) Parcel Decision

The second step of the centralised planning and permitting procedure for offshore wind energy development in the Netherlands is the adoption of parcel decisions (*kavelbesluiten*). The parcel decision designates a parcel—the location of a wind farm—and the outline of inter-array cables. As mentioned above, the parcel must be located within a wind area.[75]

Adopting parcel decisions is a competence of the Minister of Economic Affairs.[76] However, the decision must be taken in agreement with the Minister of the Interior and Kingdom Relations, the Minister of Infrastructure and Water Management, and the Minister of Agriculture, Fisheries, Food Security and Nature.[77] Although adopting a parcel decision is a discretionary power of the relevant Minister, the designated parcels will need to cover most of the designated wind areas under the North Sea Programme to achieve the Dutch offshore energy targets set by the latter.[78] Wind areas are already divided into potential parcels in the Offshore Wind Energy Roadmap 2030, providing developers with a long-term perspective.[79] The 2030 Roadmap currently covers the parcels that are needed to achieve a total installed capacity of 21 GW. However, its scheduled realisation was already delayed twice to 2031

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[70] Pursuant to Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning (Maritime Spatial Planning Directive).
[71] Government of the Netherlands, 'North Sea Programme 2022-2027', pp. 7, 98, and 108. Chapter 9 describes the designated areas.
[72] Ibid 112-113.
[73] The offshore wind ambitions of the Government have changed since the adoption of the North Sea Programme 2022-2027. See Rijksoverheid, '*Concept Notitie Reikwijdte en Detailniveau Partiële Herziening PNZ* 2022-2027', p. 14, citing *Kamerstukken* 2021/2022 33561.
[74] Programmes that are '*kaderstellend*' need to be subjected to an SEA, as well as programmes for which an appropriate assessment needs to be made: see Environment and Planning Act, Art 16.36.
[75] Offshore Wind Energy Act, Art 3 and Environment and Planning Act, Art 3.9(2)(e).
[76] Offshore Wind Energy Act, Art 3(1).
[77] Ibid.
[78] See, e.g., Parcel Decision IJmuiden Ver Alpha, p. 64; Parcel Decision Nederwiek (South) I-A, p. 66.
[79] The 21GW roadmap was communicated in *Kamerstukken* II (2021-2022) 33561, nr. 53, p. 18-19 and the most recent version can be downloaded via https://windopzee.nl/onderwerpen/waar-staan-komen-windparken/.

and then to 2032 due to several factors, such as 'longer lead times for grid connection' and 'pressures on the supply chain'.[80]

The parcel decision must be accompanied by a list of regulations required under Article 4 of the Offshore Wind Energy Act. These regulations include environmental rules, setting:

1) 'conditions and limitations under which it is ensured that the natural characteristics of Natura 2000 areas will not be adversely affected, or that they will be compensated';
2) 'conditions and limitations under which an exemption from the obligation to obtain a flora and fauna permit could be granted.'[81] Such a permit is required to derogate from the prohibition against the deliberate killing or disturbance of species protected under the Habitats Directive and the Birds Directive.[82]

The parcel decisions are generally subject to an EIA and an AA. A parcel decision for more than 20 turbines must necessarily undergo an EIA.[83] For 3 to 19 turbines, a parcel decision must undergo a screening to determine whether an EIA is required.[84] The EIA generally assesses whether the planned wind farm is likely to deliberately kill or disturb species protected under the Habitats Directive and the Birds Directive. Additionally, the parcel decision must undergo an AA if the planned wind farm is likely to have a significant effect on a Natura 2000 site, either individually or in combination with other plans or projects.[85]

In practice, the parcel decision provides a 'bandwidth', a range of options within which the developer can design the project. This range is assessed in the EIA and AA, to ensure that any project within the set limits complies with environmental obligations. The bandwidth and the attached regulations bind the project developer while providing some flexibility in the project design.[86] Additionally, the project developer is bound by generally applicable rules, such as safety rules and the general duty of care enshrined in the Dutch Environment and Planning Act.[87]

Compared to RED III, the parcel decision establishes similar rules on mitigation measures to be adopted by the developer, as those required in RAA and infrastructure area plans.

3) Tenders and permitting

The third step of the centralised Dutch procedure for offshore wind energy development is the tender procedure coordinated by the Netherlands Enterprise Agency,[88] which concludes with a wind permit being granted to a developer. The time between the publication of parcel decisions and the opening of tenders tends to be relatively short, thereby preventing environmental assessments from becoming

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[80] Netherlands Enterprise Agency, 'Dutch Offshore Wind Innovation Guide' (2025) https://english.rvo.nl/sites/default/files/2024-10/Dutch-Offshore-Wind-Innovation-Guide-2025.pdf, p. 13; *Kamerstuk* 33561, nr. 61, 'Update aanvullende routekaart wind op zee'.
[81] Offshore Wind Energy Act, Art 4(1).
[82] Environment and Planning Act, Art 5.1(2)(g); Decree Living Environment Activities (*Bal*), Art 11.37(1), 11.46(1), and 11.54(1).
[83] Environment and Planning Decree, Art. 11.6(3)(c) and Annex V column 4.
[84] Ibid.
[85] Offshore Wind Energy Act, Art 5.
[86] Ibid 4(4).
[87] The relevant safety rules that apply to wind farms in the North Sea can be found in paragraph 7.2.3 of the Environmental Activities Decree. The general duty of care is found in the Environment and Planning Act, Art. 1.6.
[88] The Netherlands Enterprise Agency forms part of the Ministry of Economic Affairs.

outdated and needing to be conducted again.[89] Once the wind permit is obtained, the project developer has an exclusive right to develop a wind farm on the parcel.[90]

Currently, the tender procedure can take four formats: with subsidy, with a comparative test, with a comparative test combined with a financial bid, and with an auction procedure.[91] In practice, permits were initially awarded through a tender that provided subsidies. Applications were assessed based on the lowest electricity cost to ensure cost-efficiency.[92] Since 2018, however, tenders have started to include non-economic criteria, such as ecological and grid-integration criteria.[93] Wind energy developers had even ended up paying the Government to receive a wind permit.[94] This shift reflected changing market conditions and improved economic efficiency in the wind energy sector.[95] As market conditions improved, subsidies were no longer necessary for projects to be economically viable. As a result, non-financial criteria, such as those related to environmental protection, started playing a role in ranking projects, thereby boosting ecological innovation.[96] However, whether this will continue to be the case is uncertain and highly dependent on market conditions.

Market conditions have deteriorated again recently due to the slow pace of industry electrification and rising supply chain prices. The Government therefore plans to reinstate tender procedures with subsidies.[97] From 2027 onwards, the Government also plans to conclude potential "Contracts for Difference".[98] Such contracts have been applied in multiple Member States already,[99] and would allow the Government to participate in the profits and losses of wind farm operators.

At the end of the tender procedure, a 'wind permit' is awarded to the selected project developer. As long as the project developer complies with the rules laid down in the parcel decision, the developer does not need to acquire a separate permit for Natura 2000 activities.[100] Additionally, the Minister of Economic Affairs may exempt project developers from the obligation to obtain a permit for flora and fauna activities, which is required for activities that cause deliberate killing or disturbance of protected species. These derogations are subject to three general conditions that would normally need to be fulfilled under nature conservation law as well: there should be no satisfactory alternative, the project

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[89] Erwin Noordover and Annemarie Drahmann, 'Tailormade regelgeving voor windturbineparken op de Noordzee' (2014) Tijdschrift voor Omgevingsrecht 110. That an updated appropriate assessment would be necessary, is also explicitly confirmed in '*Advies Raad van State betreffende het voorstel van wet, houdende regels omtrent windenergie op zee*', *Staatscourant* nr. 30128, 27 October 2014, p. 1, point 2.
[90] See Offshore Wind Energy Act, Art 13(b).
[91] Offshore Wind Energy Act, Art 14a(1).
[92] This was the case regarding *Borssele* (sites I – IV): see Netherlands Enterprise Agency (n 80) 9-10; *Kamerstukken* II (2015-2016) 33561, nr. 31 and *Kamerstukken* II (2016-2017) 33561, nr. 38.
[93] E.g. *Hollandse Kust West (site VII)*: see *Kamerstukken* II (2022-2023) 33561, nr. 55.
[94] This happened, for example, concerning *Hollandse Kust West* (sites VI and VII): see *Kamerstukken* II (2022-2023) 33561, nr. 55 and *Kamerstukken* II (2022-2023) 33561, nr. 56.
[95] Offshore Wind Energy Act, Art 14a(2); Dutch Climate Agreement 2019, p. 161.
[96] Netherlands Enterprise Agency (n 80) 62-65. These innovations form part of *Hollandse Kust Zuid*, *Hollandse Kust West* (site VI) and *IJmuiden Ver* (site Alpha) and include the use of recyclable blades, the insertion of elliptical openings in turbines to replenish water in the area and to provide shelter and food discovery options to marine animals, the construction of artificial (sometimes even biodegradable) reefs on and around the turbines, and the use of a double bubble screen to reduce underwater noise.
[97] Letter to the Parliament 30 October 2025, Kamerbrief over uitkomst vergunningverlening windenergie op zee Nederwiek I-A | Kamerstuk | Rijksoverheid.nl
[98] Ibid. This was one of the strategies explored by the Government to prevent the slowing down of the energy transition due to worsened market conditions: *Kamerstukken* II, 2023-2024, 33561, nr. 62, pp. 2, 5, 6.
[99] Ibid 5.
[100] Offshore Wind Energy Act, Art 5.

needs to fulfil one of the listed overriding public interests, and there may be no deterioration in the conservation status of the affected species. In practice, parcel decisions have consistently granted such exemptions.[101]

Compared to the previously applicable legal framework, the Offshore Wind Energy Act already offers a fairly streamlined procedure, in which government authorities adopt parcel decisions, conduct relevant assessments, and bundle permits to address some of the problems developers had experienced in the past. According to the Dutch Enterprise Agency, this "one-stop-shop-approach" has reduced pre-bid costs, decreased risks, improved coordination between Government entities, and significantly shortened timeframes for the development of wind farms.[102]

2.1.3. Grid and storage infrastructures

In contrast to offshore wind farms, grid and storage infrastructures are not subject to tailor-made regulation but to a general planning and permitting framework under the Environment and Planning Act. Nevertheless, as offshore wind farms are increasingly developed further from shore, the Netherlands has adopted several policy documents to facilitate the strategic deployment of grid and storage infrastructure at sea.

Environment and Planning Act

Since 2024, offshore grid and storage infrastructures have been subject to a general planning and permitting framework pursuant to Section 5.2 of the Environment and Planning Act: the project procedure. Under this procedure, the national government can adopt a 'project decision' for the implementation, operation or maintenance of a project of public interest to the State.[103] The project decision integrates both planning and permitting functions.

On the one hand, the project decision functions as a planning tool. The project decision replaces the former integration plan (*inpassingsplan*).[104] The project decision is a spatial decision allowing the national government to amend all relevant local and regional spatial plans with a single decision.[105] It is an essential tool for projects of public interest to the State, such as offshore electricity grid projects that typically span multiple administrative zones and that include onshore elements, such as underground cables leading to an onshore conversion station.[106]

On the other hand, the project decision functions as a permitting tool. Under Articles 5.45 and 16.7 of the Environment and Planning Act, the project decision can be made subject to a coordination

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[101] Parcel Decision IJmuiden Ver Beta, pp. 2, 64-65; Parcel Decision IJmuiden Ver Alpha, pp. 2, 64-65; Parcel Decision HK (West) VII, pp. 1-2, 58-59; ; Parcel Decision HK (West) VI, pp. 2, 59-60; Parcel Decision HK (North) V, pp. 2, 58; ; Parcel Decision HK (South) IV, pp. 2, 50-51; Parcel Decision HK (South) III, pp. 2, 50-51; Parcel Decision HK (South) II, pp. 1, 42-43; Parcel Decision HK (South) I, pp. 1, 43; Parcel Decision Borssele V, pp. 1, 38; Parcel Decision Borssele IV, pp. 1, 38; Parcel Decision Borssele III, pp. 1, 38-39; Parcel Decision Borssele II, pp. 1, 38-39; Parcel Decision Borssele I, pp. 1, 39-40.

[102] Netherlands Enterprise Agency (n 80), pp. 9 and 12.

[103] Environment and Planning Act, Art 5.44.

[104] See, previously, Spatial Planning Act, Art 3.28.

[105] Environment and Planning Act, Art 5.52.

[106] The onshore elements are located within administrative areas which are under the competence of Dutch municipalities and provinces, which extend up to 1km into the sea and which have generally been subject to previous planning. See 1990 Act on the Coastal Boundaries; 1980 Act on the Provincial Division of the Wadden Sea; 1985 Act on the Municipal Division of the Wadden Sea; Electricity Act, Art 20ca.

regime.[107] Under this coordination regime, implementation decisions, such as the granting of permits, are adopted by a single coordinating authority in accordance with Section 3.5 of the General Administrative Law Act. According to Article 5.46 Environment and Planning Act, this coordination is mandatory for certain major infrastructure projects. However, grid and storage infrastructure projects are not enumerated there. Therefore, the application of section 3.5 General Administrative Act is optional. Within this coordinated procedure, the SEA and EIA are combined into a single assessment procedure that informs the project decision, rather than being conducted separately at the planning and project levels.[108] The project decision may further stipulate that it serves as an environmental permit for activities related to its implementation, including those for Natura 2000 activities or flora and fauna activities.[109] If this occurs, the assessment rules for such activities, namely the 'habitat assessment' and the 'flora and fauna assessment', apply to the project decision.[110]

Structural Vision for Offshore Wind Energy

In July 2024, the Dutch government released its Structural Vision for Offshore Wind Energy, outlining its long-term strategy for developing offshore wind energy.[111] This Vision was further concretised in July 2025 with the adoption of the North Sea Wind Energy Infrastructure Plan, which outlines the policy choices needed to roll out offshore wind energy from 2032 to 2040.[112] These documents provide a perspective on future developments in the energy system of the Dutch part of the North Sea. Three key developments are anticipated: energy hubs, interconnectors, and hydrogen production.

The first anticipated key development concerns the development of *energy hubs*. Originally, offshore wind farms were located close to the shore and could therefore be directly and individually connected to the onshore grid by the developer. This is referred to as the radial model.[113] In this model, the export cables were considered to form part of the offshore wind farm. However, as wind farms moved further away from the shore, the responsibility of connecting them to the onshore grid shifted to the national Transmission System Operator (TSO) – TenneT in the Netherlands. This now makes it possible to connect several wind farms simultaneously to one single offshore conversion station or to an artificial 'energy island'. This is known as the 'hub' model. In the Netherlands, the first large-scale energy hub may be developed in wind energy area 6/7 after the partial revision of the current North Sea Programme.[114]

Another recent development is the connection of one wind farm to multiple coastal States via so-called *hybrid interconnectors*. In this model, the cables have a hybrid function, serving both as 'export' cables (for transporting electricity from the offshore wind farm to the shore) and as interconnection cables (for trading electricity between two coastal States). This hybrid function ensures the efficient use of the cables even when the offshore wind farm operates below its full capacity. In the

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[107] Until 2024, this procedure was known as the *Rijkscoördinatieregeling*. See, previously, 2008 Spatial Planning Act (*Wro*), Art 3.35, first paragraph.
[108] Environment and Planning Decree, Art 11.6(3)(a). Previously, Environmental Management Act (*Wm*), Art 14.4b; EIA Decree, D 24.2 and D 15.2.
[109] Environment and Planning Act, Art 5.52(2).
[110] Ibid and Decree Living Environment Quality, Section 8.6.
[111] *Kamerstuk* 33561 nr. 63, *Structuurvisie Windenergie op Zee (SV WoZ)*.
[112] Ministry of Climate Policy and Green Growth, 'North Sea Wind Energy Infrastructure Plan' (2025), https://www.rijksoverheid.nl/documenten/rapporten/2025/07/16/het-windenergie-infrastructuurplan-noordzee.
[113] In the Netherlands, such a connection model has been used for the wind farm '*Gemini*'. The Netherlands shifted to a hub model with the introduction of the Offshore Wind Energy Act in 2016.
[114] *Kamerstuk* 33 561, no. 63, p. 7.

Netherlands, a first hybrid connection – known as Lionlink – is being developed by TenneT and National Grid Ventures to connect Nederwiek 3 to both the Netherlands and the UK. In the recent WIN, additional interconnections between the Netherlands and other coastal States, such as Belgium, are foreseen from 2040 onwards.

Finally, a more uncertain development is *offshore hydrogen production* between 2040 and 2050. Hydrogen production through electrolysis is expected to play a crucial role in the energy transition.[115] With the future energy system being largely dependent on solar and wind energy, electrolysis can help accommodate variable electricity generation and a flexible energy demand. As highlighted in the Dutch North Sea Wind Energy Infrastructure Plan (the Windenergie Infrastructuurplan Noordzee or WIN), producing hydrogen at sea offers two advantages: space availability and lower societal costs from savings on electricity infrastructure.[116] As offshore wind farms are developed farther from the coast, the cost of transporting electricity to shore increases significantly due to the installation and maintenance of longer cables. Thus, producing hydrogen at sea in areas such as wind area 6/7 is considered to be a key opportunity.[117] In the Netherlands, the various scenarios studied range from 2.4 to 26 GW of electrolysis in 2040, encompassing both onshore and offshore electrolysis.[118] In 2024, the first offshore pilot project (PosHYdon) was launched off the coast of Scheveningen.[119] However, the upscaling of such a technological development remains highly uncertain. The technology remains in an infancy stage, and the scale increase needed — from pilot projects to GW projects — is significant. Additionally, the economic cost of development and the ecological impact of such a technology on the North Sea remain largely unknown.[120]

2.2. Implementation Pathways for RED III Renewable Energy Areas

At the time of writing, the Netherlands is implementing RED III. The coordinated mapping has been finalised since May 2025, identifying all existing and planned wind areas under the North Sea Programme 2022-2027 as available areas for the installation of renewable energy plants and the related infrastructure.[121] Additionally, the Netherlands' legislative implementation of RED III is on its way. The respective act has been adopted by the Second Chamber of the Dutch Parliament on 2 October 2025 and is subsequently discussed in its First Chamber.[122] The envisioned legislative changes primarily concern the Environment and Planning Act and the Offshore Wind Energy Act.

In the Explanatory Memorandum to the proposed Act for implementing RED III, the Dutch Government notes that the existing regulatory framework for offshore wind energy, as embedded in the *Offshore Wind Energy Act,* already shares many similarities with the designation process of RAAs as prescribed by RED III.[123] Consequently, the Government does not consider it necessary to amend the Offshore Wind Energy Act substantially at present. The designation process of RAAs and related changes will instead be added to the Environment and Planning Act, which also applies to the Dutch part of the North Sea.

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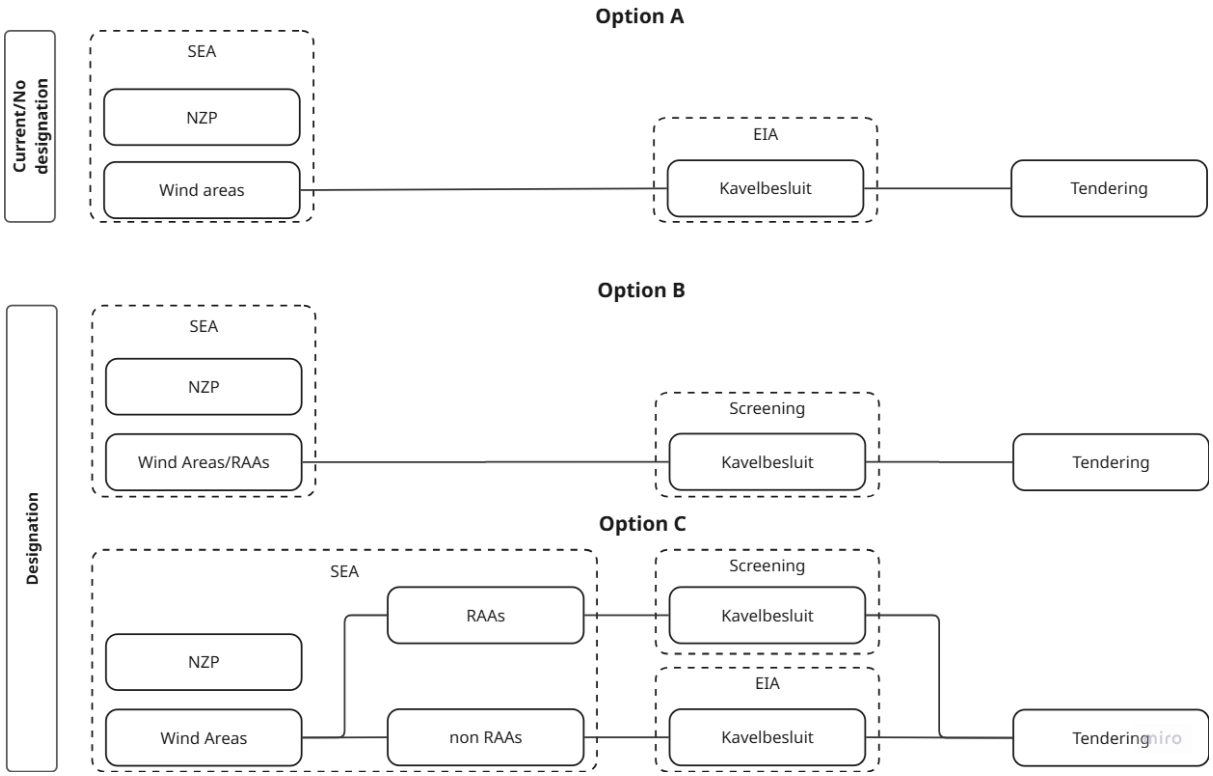
[115] North Sea Wind Energy Infrastructure Plan (n 112), pp. 45-47.
[116] Ibid 46-47.
[117] Ibid 48.
[118] Ibid 23-25.
[119] See 'Poshydon', <https://poshydon.com/nl/home/>.
[120] North Sea Wind Energy Infrastructure Plan (n 112), p. 46.
[121] *Kamerstukken* 2023–2024, 31 239, nr. 396; 'Mapping RED' https://www.internetconsultatie.nl/mapping_red3/b1 (n.d.).
[122] *Kamerstukken* I, 2025/26, B of 4 November 2025.
[123] Explanatory Memorandum to the Bill for implementing RED, *Kamerstukken* II 2024/25, 36766, nr. 3, p. 18.

2.2.1. Designating RAAs

By 21 February 2026, the Netherlands must have adopted one or more plans designating RAAs.[124] However, it retains a large margin of discretion in implementing the Directive, including with regard to decisions on whether and how to designate RAAs at sea. This section presents three realistic options for implementing the changes brought about by RED III in the Dutch part of the North Sea, along with their respective advantages and disadvantages (Figure 2). Other options can be found in the Annex to this report and have been excluded for the reasons described below.

Figure 2. Implementation Options



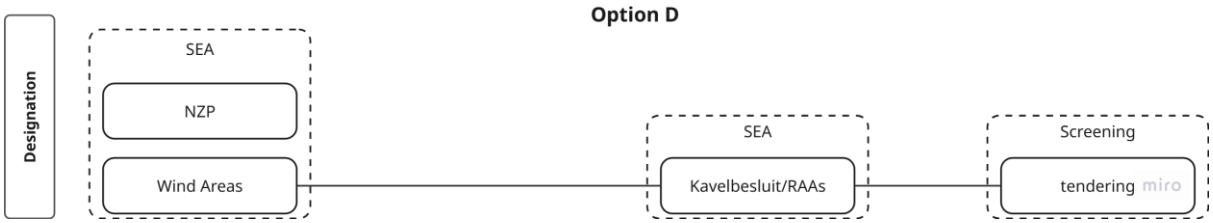
Excluded options

To begin with, this section excludes options for which the existing Dutch permitting system – the plot decisions and tendering procedure – would be replaced entirely by a new regime under RED III. As explained in section 2.1.2 of this report, the Offshore Renewable Energy Act provides a mature permitting regime that ensures an efficient use of marine space and financial resources through the centralised parcelling of the available areas and the centralised conduct of site studies. It also has the potential, via its tendering system, to stimulate ecology-benefitting innovations beyond what is minimally required by the law. This report, therefore, presupposes that it is desirable to keep these existing features. This section also excludes the option of designating individual parcels as RAAs. Although the Dutch plot decision system and RAAs share certain characteristics, such as the exempting of developers from the obligation to conduct an EIA and an appropriate assessment and the centralised establishment of rules on effective mitigation measures that need to be followed in the area concerned,

[124] RED, Art 15c(1).

this option would seem to offer limited to no added value compared to not designating RAAs at sea.[125] This option would not accelerate the procedure, as individual environmental assessments would still be required for each plot. Worse, it could even make the procedure more cumbersome by adding an extra layer of assessment during tendering, namely a screening obligation (see figure 3).[126]

Figure 3. Excluded Option D



Option A

At least three potential implementation options then remain. First, there is option A (see Figure 2), which consists of designating RAAs on land only rather than at sea. The regime of wind areas and plot decisions as it currently exists under the Offshore Wind Energy Act would then remain the same. There are indications that designating RAAs on land only may be legally possible and perhaps also strategically desirable. Under RED III, the Netherlands retains a wide margin of discretion in choosing the location of RAAs, and it is therefore not necessarily obliged to designate such areas at sea. As stressed by the EU Commission, RAAs are only a subset of all the possible areas where renewable energy projects can be developed under different (faster and simpler) permitting rules.[127] The Netherlands may therefore only want to designate RAAs where they can actually shorten the existing permitting procedure. It is questionable whether this is the case when it comes to offshore wind energy since the relevant Dutch permitting regime has already been significantly streamlined. Currently, it is the shortest of the North Sea coastal States.[128] Additionally, RED III clarifies that RAAs are to be designated in areas that are considered to be particularly suitable for renewable energy deployment because significant environmental impacts are not expected there, with priority being given to artificially built areas, which are typically found on land.[129] As there are currently still many uncertainties regarding the effects of offshore wind farms on marine species and larger marine ecosystems, even at the project level,[130] excluding risks of significant environmental impact at the strategic level will likely raise several challenges at sea, if not making it altogether impossible. For these reasons, legal and strategic considerations support limiting the designation of RAAs to areas on land.

However, at the same time, it should be noted that legal uncertainties as to whether this option would meet the requirements of RED III exist too. Notably, RED III requires Member States to ensure that the combined size of RAAs is 'significant and that they contribute to the achievement of the objectives'

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[125] These shared characteristics are acknowledged in the Explanatory Memorandum to the Bill for implementing RED, p. 18.
[126] RED, Art 16a(4).
[127] See European Commission (n 36) p. 7 and Directive (EU) 2023/2413, Recital 36.
[128] As mentioned above, the streamlined and centralised permitting procedure in the Netherlands makes it the shortest in the North Sea, with approximately 4.5 years between site tender and commissioning. See Ceciel Nieuwenhout, 'Developing Offshore Wind Farms - A Comparison and Analysis of the Legal and Governance Frameworks of the North Sea Coastal States' (2023) 10 European Journal of Comparative Law and Governance 518, p. 9.
[129] RED, Art 15c(1)(a).
[130] See, e.g., Parcel Decision Nederwiek (South) I-A, pp. 62-63.

set out in the Directive.[131] Given the strategic role offshore wind energy is expected to play in the Dutch energy transition, it is not immediately clear whether designation exclusively on land would meet this requirement. What is more, accelerating renewable energy deployment in the Dutch North Sea remains important, both because of the North Sea's strategic contribution to national and EU renewable energy targets, and because of the new permitting time limits introduced by RED III. Although the current permitting procedure for offshore wind farms in the Netherlands is already relatively short (4.5 years on average according to existing literature),[132] it needs to be further accelerated to meet the ordinary time limits set under Article 16b RED.[133] The permitting procedure would need to be shortened by 1.5 years on average in the scenario where no RAAs would be designated at sea.[134] However, the mandatory time limits for permitting procedures within RAAs are even shorter. If RAAs were designated at sea, the permitting procedure would have to be shortened by an average of 2.5 years, which obviously raises questions of feasibility and hence of compliance.[135]

Options B & C

If the Netherlands decides to designate RAAs at sea, two options are possible: whole wind areas could be designated as RAAs (option B in Figure 2) or some smaller areas within wind areas could be designated as RAAs, e.g. a combination of neighbouring parcels (option C in Figure 2). In both cases, the environmental assessments would be conducted in one take at the strategic RAA plan level, with only the screening remaining at the parcel decision level instead of an EIA and an AA.[136] Naturally, all other decisions that are currently made at the parcel decision level, such as where precisely the wind farm should be located – i.e. at which plot – and what rules should be complied with to ensure smooth coordination with other users of the sea, would remain at the parcel decision level. Under option B, decision-makers may choose to designate *all* wind energy areas as RAAs or only some of them, depending on whether all wind areas meet the requirements of RED III (such as no overlap with major migratory routes). If only some wind energy areas were designated as RAAs (under option B) or if only sub-areas of wind energy areas were designated as RAAs (option C), then the existing permitting regime and the accelerated regime would co-exist. This means the parcel decision would be subject to a full EIA and an AA *or* to a streamlined screening, depending on the applicable regime. A potential reason for choosing one of these blended options would be that they offer more flexibility if significant environmental effects cannot be excluded for all (or entire) wind areas at a strategic level.

With regard to environmental effects, RED III allows the designation of RAAs only outside Natura 2000 sites, nationally protected nature areas and major migratory routes for birds and marine mammals.[137] Although none of the designated or searched wind areas in the current North Sea Programme overlap with a Natura 2000 site,[138] millions of migratory birds fly over the North Sea every year during the spring and autumn migrations, as also noted in the most recent parcel decisions.[139] This migration primarily

[131] Article 15c para 3 RED.
[132] Ceciel Nieuwenhout, 'Developing Offshore Wind Farms - A Comparison and Analysis of the Legal and Governance Frameworks of the North Sea Coastal States' (n 128).
[133] Ibid.
[134] RED, Art 16b(1).
[135] Ibid, Art 16a(1).
[136] RED, Art 16a(3)-(4).
[137] RED, Art 15c(1)(a)(ii).
[138] See the Structuurvisiekaart 2022-2027 and the Zoekgebiedenkaart Noordzee in Programma Noordzee, pp. 104 and 116.
[139] See e.g., Kavelbesluit kavel I-A windenergiebied Nederwiek (zuid), Staatscourant nr. 13171, 16 mei 2025, pp. 16 and 71; Kavelbesluit kavel Alpha windenergiegebied IJmuiden Ver, Staatscourant nr. 35269, 28 December 2023, p. 15.

occurs in the coastal zone, but can also take place further out at sea, including migration to and from the United Kingdom. Migration in the southern part of the North Sea furthermore concerns not only birds but also bats and marine mammals, which are covered by RED III's limitations too.[140] Therefore, a critical look needs to be taken at whether existing or planned wind areas (or sub-areas thereof) overlap with important migratory routes, since such overlap would preclude their designation as RAA. Although it has to be noted that most migrating birds seem to prefer routes on land and not on sea[141] and that most continental migration therefore seems to occur over land, offshore migration corridors may also be ecologically relevant. The identification of major migratory routes as well as other environmentally sensitive areas must furthermore be supported by robust, species-specific data. To that end, if RAAs were designated at sea, Member State authorities would need to use all appropriate and proportionate tools and datasets to identify the areas where renewable energy development would not have a significant environmental impact. Examples of such tools and datasets include wildlife sensitivity mapping and the data available in the context of the Natura 2000 network.[142] The results of these analyses might further limit the areas that could be designated as RAAs or that Member States would deem desirable for designation.

In the short term, option B (and potentially also option C) would require either a revision of the current North Sea Programme 2022-2027 or the adoption of ad hoc RAA plans. In both cases, a new SEA and a new AA would be required.[143] As acknowledged by the Dutch EIA Commission, the assessment of the current North Sea Programme indicates that 'effects on nature *are to be expected*, particularly on birds and underwater life (including marine mammals, fish, and bottom life), which may be contrary to legislation and regulations.'[144] Additionally, effective mitigation measures have not been evaluated in previous assessments of the North Sea Programme, but have instead been left for follow-up assessments at the project level.[145] Therefore, the wind areas that have been designated in the North Sea Programme 2022-2027 are not suitable, as they currently stand, for the immediate accelerated deployment of renewable energy pursuant to Article 15c of RED III. Designating RAAs would, at the very least, require more detailed environmental assessments and, subsequently, the establishment of rules for effective mitigation measures that developers need to adopt in the area.

In the long term, it would seem to make sense, where possible, to designate new RAAs at sea when a new North Sea Programme is adopted, at the very least if the Dutch Government were to proceed with implementation option B. The reason for this is that it would avoid duplication of strategic assessment procedures. The designation of RAAs in future North Sea Programmes should then naturally also be accompanied by rules on effective mitigation measures to be adopted by developers.[146]

To sum up, choosing between the three options requires determining a variety of things, such as whether designating RAAs at sea could actually accelerate the existing Dutch permitting procedure; whether designating RAAs exclusively on land would meet the legal requirement that the combined size of RAAs is significant; in which areas and at what level meaningful environmental assessments and mitigation rules could be conducted and established at sea; and which marine areas are

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[140] See e.g., Kavelbesluit I windenergiegebied Borssele, Staatscourant nr. 14428, 8 April 2016, p. 9; Kavelbesluit III windenergiegebied Hollandse Kust (zuid), Staatscourant nr. 2543, 19 Januari 2018, p. 9. Kavelbesluit kavel I-A windenergiebied Nederwiek (zuid), p. 58; Kavelbesluit kavel Alpha windenergiegebied IJmuiden Ver, p. 55.
[141] See for example Euring, Bird Migration Atlas.
[142] RED, Art 15c(1)(a)(iii).
[143] Ibid 15c(2).
[144] EIA Commission '*Toetsingsadvies over het milieueffectrapport, projectnummer*' (2022) 3595, p. 2.
[145] Ibid 7.
[146] Ibid.

environmentally suitable for accelerated deployment of renewable energy to begin with given, the constraints imposed by RED III (such as the prohibition of overlap with major migratory routes).

2.2.2. Designating Infrastructure Areas

Under RED III, the Netherlands can also adopt plans that designate grid and storage Infrastructure Areas.[147] In contrast to RAAs, the Netherlands is not legally obliged to designate such Infrastructure Areas. However, as emphasised by the recent Dutch North Sea Wind Energy Infrastructure Plan (the WIN), the energy transition depends heavily on the practical and long-term planning of the infrastructure needed to integrate the generated electricity into the energy system. It is therefore worth considering whether such areas could contribute positively to achieving this goal.

Grid infrastructure

As noted in section 2.1.3 above, the Netherlands envisions the development of energy hubs and hybrid interconnections. This will require strategic planning to connect multiple wind farms to a single conversion station or to an artificial energy island, or to connect a single wind farm between multiple coastal States. Currently, however, large grid infrastructures are planned on a case-by-case basis in the Dutch part of the North Sea. The Infrastructure Areas introduced by RED III may provide an opportunity to help realise the necessary strategic planning instead. Under RED III, the Netherlands could designate large grid infrastructure areas in the North Sea. Perhaps the most obvious instruments to use for this purpose would be the subsequent North Sea Programmes, as these are the primary spatial planning documents relating to the Dutch marine space. As highlighted in the WIN, investment decisions for grid infrastructures must be made approximately 10 years in advance.[148] This makes acceleration of infrastructure development unrealistic in the short term covered by the current North Sea Programme (2022-2027). Still, long-term planning is essential when adopting subsequent North Sea Programmes. Using the concept of 'RED III Infrastructure Areas' might offer a clear framework for this strategic long-term planning.

There are, however, two caveats. First, RED III clarifies that Infrastructure Areas must aim to support and complement RAAs,[149] and it is therefore questionable whether the Netherlands could designate offshore Infrastructure Areas without also designating RAAs in the North Sea. Of course, the Dutch authorities would in this case still be at liberty to designate special areas for infrastructure development via regular spatial planning procedures. The projects to be located in these areas would then need to undergo environmental assessments in the regular manner. Second, the RED III Infrastructure Area framework does not necessarily seem to secure the said locations for renewable energy projects. More specifically, it does not seem to guarantee that infrastructure projects would get priority over other (potential) users of the area whose use of the area is incompatible with infrastructure deployment. Additional legal (or binding policy) measures, such as the abovementioned use of the North Sea Programme, which is a binding spatial planning tool, would therefore seem to be necessary if the Government were to aspire to achieve this goal.

However, although RED III Infrastructure Areas may therefore be able to help facilitate strategic planning, it remains highly uncertain whether they can actually accelerate permitting for offshore grid infrastructure in the Netherlands. As mentioned above, the Dutch regulatory framework for offshore grid infrastructures has already undergone major streamlining. Currently, grid infrastructure projects are

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[147] RED, Art 15e(1).
[148] North Sea Wind Energy Infrastructure Plan (n 112), p. 3.
[149] RED, Art 15e(1).

subject to centralised planning. A coordinated permitting procedure can be applied on the basis of a single environmental assessment procedure that informs the project decision.[150] The project decision then serves as an environmental permit for activities related to its implementation.[151] Therefore, RED III is likely to accelerate the permitting process for offshore grid infrastructures only if multiple projects can be planned and effectively assessed at a strategic level. Subsequently, individual project decisions would only undergo screening for unforeseen adverse effects, provided that they implement the rules on mitigation measures established in the North Sea Programme.[152]

Storage infrastructure

Additionally, designating infrastructure areas could ensure the strategic deployment of storage infrastructures and facilitate the scaling up of hydrogen production projects. While hydrogen offers more than just storage opportunities, electrolysis can play a crucial role in storing renewable electricity as hydrogen, which can be stored in large volumes for extended periods.[153]

Currently, offshore hydrogen production is not regulated by any special regime as the technology remains small-scale and in its infancy. Nevertheless, when large-scale hydrogen production becomes a realistic option, it would most likely be made subject to the same regime as large grid infrastructures and infrastructure of national interest more generally.[154] Thus, such projects would then be subject to centralised planning, with the option to apply a coordinated permitting procedure, and a single environmental assessment procedure that informs the project decision.[155]

Therefore, as for grid infrastructures, RED III is likely to accelerate permitting for offshore storage infrastructures only if multiple projects can be planned and effectively assessed at a strategic level. Subsequently, individual project decisions would only undergo a screening for unforeseen adverse effects, provided that they implement the rules on mitigation measures established in the Infrastructure Area plan (which could be integrated into the North Sea Programme).[156]

To summarise, strategic planning of key infrastructure for the energy transition is urgent and necessary. Designating Infrastructure Areas in the North Sea Programme can provide a framework for the long-term planning of future grid and storage infrastructures. However, it remains unclear whether such areas can effectively accelerate the permitting process of such projects as envisioned under RED III. The existing development framework for projects of national importance has already undergone significant streamlining and such projects are already subject to a single assessment procedure.

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[150] Environment and Planning Act, Art 5.45 and 5.52(2).
[151] Ibid, Art 5.52(2).
[152] RED, Art 15e(3).
[153] European Commission, 'A hydrogen strategy for a climate-neutral Europe' COM(2020) 301 final.
[154] Environment and Planning Act, Art 5.45(2) and 5.46.
[155] Ibid, Art 5.45 and 5.52(2).
[156] RED, Art 15e(3).

Part 3. Challenges and Opportunities in the Dutch North Sea

RED III introduces three important changes for the planning and permitting of offshore renewable energy developments. First, RED III offers a special regime to streamline environmental assessments for renewable energy development. Second, RED III introduces multiple presumptions to simplify compliance with nature conservation obligations. While these presumptions are necessary for streamlining assessment procedures within RAAs and Infrastructure Areas, most of them apply to any renewable energy project, provided the necessary or appropriate mitigation measures are adopted. Finally, RED III creates a new system to financially compensate for adverse environmental effects when projects are found to be highly likely to cause unforeseen significant environmental effects, following the screening, and when those effects cannot be mitigated or compensated for in any other proportionate manner.

Part 3 of this report evaluates the extent to which these three changes can be implemented in the existing Dutch practice and what impact they would have thereon. Section 3.1 analyses under which conditions environmental assessments can be streamlined in the Dutch part of the North Sea. Section 3.2 evaluates the relevance of the three nature conservation presumptions for offshore wind energy development in the Dutch part of the North Sea. Section 3.3 outlines the conditions under which monetary compensation can be applied and assesses whether these conditions are typically met in the Dutch part of the North Sea.

3.1. Streamlining environmental assessments

The first change introduced by RED III to the legal framework is procedural. Under certain conditions, renewable energy projects are exempted from EIA and AA requirements. The Directive assumes that a SEA can ensure that likely significant effects are excluded by setting the geographical and technological conditions under which future projects would be developed. Since EU law only requires an EIA for projects likely to have significant adverse environmental effects,[157] any projects that comply with such predefined conditions would not require an EIA.

This raises the question: should environmental assessments be streamlined? And more precisely, can an SEA substitute for an EIA and AA at the project level from a legal perspective? The answer might seem self-evident as RED III explicitly allows such streamlining. However, it depends on two requirements: (1) whether RAAs and infrastructure areas can be designated in the Dutch part of the North Sea and (2) whether effective mitigation measures can be identified at the strategic level to ensure compliance with nature protection law. These two requirements follow from Article 2(1) of the EIA Directive, which requires projects that are likely to have significant effects on the environment by virtue, inter alia, of their *location* on the one hand, and of their *nature and size* on the other, to be made subject to a requirement for an assessment of their effects (see box 1 below). As a rule, however, an EIA is always required if the project is likely to have significant transboundary effects or if a third State that is likely to be significantly affected requests so, according to Article 7 of the EIA Directive.

1) Location requirements

First, streamlining environmental assessment procedures is only permissible under RED III in so-called low-conflict areas, namely, where renewable energy development is not expected to have

[157] EIA Directive, Art 2(1).

significant environmental effects. Although in Infrastructure Areas, such effects can be duly mitigated or, where not possible, compensated for.

Box 1: EIA & Appropriate Assessment (AA)

EIA Directive, Article 2(1): Member States shall adopt all measures necessary to ensure that *projects likely to have significant effects on the environment* by virtue, inter alia, of their nature, size or *location* are made subject to an EIA.

In the Dutch offshore practice, the EIA primarily focuses on assessing significant effects on *birds and other protected species*, in accordance with Article 5 of the Birds Directive and Article 12(1) of the Habitats Directive, which prohibit their deliberate killing or disturbance.

Habitats Directive, Article 6(3): Any plan or project not directly connected with or necessary to the management of the site but *likely to have a significant effect* thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment (AA) of its implications

Under RED III, RAAs can only be designated in areas where renewable energy development is not expected to have significant environmental effects, so-called "low-conflict areas".[158] Certain areas have been pre-excluded given their environmental sensitivity, and where significant environmental effects cannot be a priori excluded. These pre-excluded areas are Natura 2000 sites, nationally protected nature areas, and major migratory routes for birds and marine mammals.[159] As also highlighted by the CJEU, however, a likelihood of significant effects may arise not only from plans or projects that are located within a protected site but also from plans or projects that are located outside a protected site.[160] Therefore, Member States must also identify and exclude other areas where renewable energy developments are expected to have a significant environmental impact on Natura 2000 sites.[161]

Low-conflict areas shall be identified using all appropriate and proportionate tools and datasets, including wildlife sensitivity mapping, while taking into account the data available in the context of the development of a coherent Natura 2000 network.[162] Since these low-conflict areas are intended to exempt projects from the need to subsequently carry out an EIA and AA, their identification should ideally also take into account the evaluation criteria used to determine whether such assessments would normally be required:

- For EIAs, evaluation criteria for projects falling under the scope of Article 4(2) of the EIA Directive, such as offshore wind farms, are outlined in Article 2(1) and Annex III of the EIA Directive. As mentioned above, projects likely to have significant environmental effects, for example by virtue of their location, must be made subject to an EIA. The sensitivity of the location must be determined considering the existing land use, the relative abundance, quality,

[158] RED, Art 15c(1). As mentioned above, in infrastructure areas, such effects can be duly mitigated or, where not possible, compensated for. See Art 15e(1).
[159] Ibid, Art 15c(1)(a)(ii). For infrastructure areas, major migratory routes are not pre-excluded, and grid infrastructure shall only avoid other protected areas. See Art 15e(1)(a)-(b).
[160] C-142/16 *European Commission v Federal Republic of Germany*, para 29: 'The fact that the project (...) is not situated in the Natura 2000 areas concerned, but rather at a considerable distance from them (...) in no way precludes the applicability of the requirements laid down in Article 6(3) of the Habitats Directive.'
[161] RED, Art 15c(1)(a)(ii): 'excluding (...) other areas identified on the basis of sensitivity maps and the tools referred to in the point (iii).' Such exclusion does not apply to infrastructure areas.
[162] Ibid 15c(1)(a)(iii).

and regenerative capacity of natural resources in the area, as well as the natural environment's absorption capacity.

- For AAs, an assessment is required when there is a probability or risk that the plan or project will have significant effects on the site concerned.[163] '[S]uch a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the site concerned'.[164] However, significant effects under Article 6(3) of the Habitats Directive must be interpreted as linked to the site's conservation objectives.[165] Therefore, significant effects only exist when the plan or project may undermine the site's conservation objectives.[166]

Some areas that are currently designated under the Dutch North Sea Programme may not meet the location requirements for RAAs. First, although no wind areas overlap with Natura 2000 sites, some uncertainty remains regarding possible overlap with important migratory routes for birds and marine mammals.[167] Second, it cannot be ruled out that renewable energy development in the currently designated wind areas would cause significant environmental effects. The SEA of the current North Sea Programme indicates that 'effects on nature are to be expected, particularly on birds and underwater life (including marine mammals, fish, and bottom life).'[168] The SEA further notes that significant adverse effects may occur on the objectives of Natura 2000 areas for the northern gannet, silver gull, common tern and great black-backed gull.[169] Accordingly, parcel decisions have always required an EIA and an AA,[170] thereby confirming that a risk of significant adverse effect on Natura 2000 areas could not be ruled out.

While EIAs and AAs have consistently been required for all parcel decisions to date, this does not mean that offshore wind farms systematically produce significant adverse environmental effects—quite the opposite. AAs have systematically found that carrying out the planned activity, given the relevant conservation objectives, would not adversely affect the natural characteristics of protected Natura 2000 areas. EIA results, on the other hand, are less conclusive. The killing or disturbance of individual birds or other protected species has never been ruled out. However, the planned activities have never been found to deteriorate the conservation status or to undermine the aim of maintaining species populations at a favourable conservation status in their natural range, even when combined

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[163] C-127/02 *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, para 43.
[164] Ibid, para 44.
[165] C-293/17 *Coöperatie Mobilisation for the Environment UA and Vereniging Leefmilieu v College van gedeputeerde staten van Limburg and College van gedeputeerde staten van Gelderland*, para 93.
[166] C-441/17 *European Commission v Republic of Poland*, para 112.
[167] As mentioned above, millions of migratory birds fly over the North Sea every year during the spring and autumn migrations, as noted in the most recent plot decisions. However, according to environmental NGOs, Dutch marine spatial planning has only taken into account the role of ecological corridors and measures to a limited extent. See, e.g., Bird Life International and Vogelbescherming Nederland, *Assessment of the Marine Spatial Plan of The Netherlands – Alignment of The Dutch Marine Spatial Plan with EU environmental objectives* (2023), https://www.birdlife.org/wp-content/uploads/2023/09/Birdlife-Maritime-Spatial-Plan-Assessment-NL_2023.pdf.
[168] EIA Commission (n 144), p 2.
[169] Ibid.
[170] This can be found in Sections 7.2. of plot decisions. E.g., Parcel Decision Borssele I, p. 28; Parcel Decision HK (South) III, p. 40; Parcel Decision Nederwiek (South) I-A, p. 53; Parcel Decision IJmuiden Ver Alpha, p. 51.

with other offshore wind farms. Consequently, all parcel decisions to date have granted derogations for the deliberate killing and disturbance of specific protected species.[171]

The gap between the systematic requirement to conduct EIAs and AAs and the systematic conclusion that significant effects are not expected stems from the consideration of mitigation measures, which can only be considered during the assessment stage rather than at the initial screening stage. During the screening, mitigation measures are not considered, as by definition they presuppose that significant adverse effects are likely. In contrast, they are taken into account during EIAs and AAs, ensuring that such effects are avoided or, at least, significantly reduced.

2) Mitigation measures requirement

Under RED III, in order for a renewable energy project to be exempted from the obligation to undergo an EIA and an AA, it must comply with the rules on effective mitigation measures established at the strategic level.[172] These measures shall prevent, or at least significantly reduce, adverse environmental effects while ensuring compliance with:

- Article 6(2) of the Habitats Directive – avoiding deterioration of Natura 2000 sites insofar as such deterioration could be significant in relation to the objectives of this Directive.
- Articles 12(1) of the Habitats Directive and 5 of the Birds Directive – preventing deliberate killing or disturbance of protected species, as well as deterioration or destruction of their breeding and resting sites;
- Article 4(1) of the Water Framework Directive – preventing deterioration of surface and groundwater status, and achieving good ecological status.[173]

The mitigation measures must also be proven to be effective. Since the identified mitigation measures are intended to exempt projects from subsequent EIA and AA obligations, they should ensure that significant environmental effects and impacts on the conservation objectives of Natura 2000 sites are avoided or at least significantly reduced. Therefore, the mitigation measures should be described in detail, with an explanation based on definitive scientific evidence of their effectiveness in achieving their preventive goal.[174] They shall be distinguished from compensation measures. Compensation measures do not prevent adverse effects on specific specimens or their habitats, but instead aim to offset them – for instance, by improving the quality of their habitats in other locations.

In the Dutch part of the North Sea, rules on mitigation measures are systematically established in plot decisions, but not at the strategic level.[175] These rules are not established at the strategic level due to the current nature of marine spatial planning. The North Sea Programme and its marine spatial plan only designate areas and the associated installed power capacity expected therein, rather than designing specific projects. Consequently, mitigation measures are, until now, excluded from plan-level assessments. The SEA and AA instead focus on assessing the effects of developing a given power capacity within a designated area. They also evaluate the cumulative impact of the total installed

[171] This can be found in Sections 7.5.7 or 7.5.8 of plot decisions. E.g., Parcel Decision Borssele I, pp. 39-40; Parcel Decision HK (South) III, pp. 50-51; Parcel Decision Nederwiek (South) I-A, pp. 66-67; Parcel Decision IJmuiden Ver Alpha, pp. 64-65.
[172] RED, Art 16a(3) and 15e(2).
[173] Ibid, Art 15c(1)(b) and 15e(1)(e). Compliance with these specific nature protection provisions is only required for RAAs and not for infrastructure areas.
[174] C-142/16 *European Commission v Federal Republic of Germany*, paras 37–45.
[175] This is required under Article 4(1)(b)-(c) of the Offshore Wind Energy Act and can generally be found in Section 7.8 and Part III of the plot decisions, Measures 2 or 3, and 4.

capacity needed to meet the Dutch offshore targets, taking into account the expected number of turbines and anticipated technological improvements over time.

The established rules on mitigation measures have remained relatively stable since 2016. Therefore, establishing them at the strategic level, such as in the North Sea Programme, may be possible and even required under the SEA Directive without altering their content. Indeed, SEA reports must include information on mitigation measures for implementing the plan or programme, which may reasonably be required, given current knowledge and assessment methods.[176] Current mitigation measures typically include:

1) *Bandwidth measure*: capping the maximum number of turbines and the minimum power of the wind farm to reduce bird/bat collisions, especially among local non-breeding bird species.[177]
2) S*tandstill measure:* slowing down or stopping turbines during predicted mass bird migrations.[178]
3) *Cut-in speed measure*: raising the wind speed threshold at which a wind turbines start turning during predicted bat migration peaks.[179]
4) *Underwater noise measures*: deploying acoustic deterrent devices, using slow and soft start techniques, and applying an underwater noise standard.[180]

Nevertheless, it is not self-evident that these mitigation measures meet the necessary standards under RED III.

Bottlenecks and solutions

The main bottleneck concerns the interpretation of Article 12(1) of the Habitats Directive and Article 5 of the Birds Directive when adopting rules on mitigation measures.[181] Article 15c(1)(b) of RED requires that the rules established in RAA plans ensure that the appropriate mitigation measures are

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[176] SEA Directive, Art 5(1)-(2) and Annex I.

[177] Essentially, the fewer wind turbines there are, the lower the risk of collision. Currently, a maximum of 76 turbines on average is considered to limit the risk of collision to a level that ensures the favourable conservation status of the little gull, great black-backed gull, and herring gull, and to exclude significant adverse effects on Natura 2000 areas. See Parcel Decision Borssele I, p. 30. Accordingly, all the following wind farms have been capped at 76 turbines or fewer.

[178] The rotation speed is reduced to less than 1 or 2 rotations per minute during the mass migration of birds. The measure was initially to be implemented through real-time monitoring. However, due to the high costs associated with such last-minute adjustments, it was decided to base the near shutdown of wind farms on a signal from the Government in consultation with TenneT, using a model that predicts mass migrations two days in advance. The first shutdown took place in 2023 at Borssele III and IV. See, e.g., Parcel Decision Nederwiek (South) I-A, pp. 71-73. See also 'Maatregel om tijdens vogeltrek windparken op zee stil te zetten dit najaar formeel van kracht' (Noordzeeloket) https://noordzeeloket.nl/functies-gebruik/windenergie/nieuws-windenergie-zee/maatregel-tijdens-vogeltrek-windparken-zee-stil/.

[179] Initially, the cut-in speed was 5 m/s during mass migration periods. However, subsequent field research has better identified the conditions under which those migrations are taking place. The cut-in speed now varies between 3.6 and 5.6 m/s at hub height (between sunset and sunrise from mid-August through the end of October). See, e.g., Parcel Decision Nederwiek (South) I-A, pp. 73-74.

[180] The underwater noise standard has evolved from a variable standard, depending on the period and number of turbines to be installed, to a fixed standard of 164 dB, with specific exemptions to simplify technical adjustments and promote innovation. See, e.g., Parcel Decision Nederwiek (South) I-A, pp. 74-77.

[181] This has been transposed in the Environment and Planning Act, Art 5.1(2)(g); Living Environment Activities Decree (*Bal*), Art 11.37(1), 11.46(1), and 11.54(1).

applied in a proportionate and timely manner to *ensure compliance* with the obligations laid down, *inter alia,* in Articles 6(2) and 12(1) of the Habitats Directive and Article 5 of the Birds Directive.

On the one hand, in the Netherlands, the two prohibitions are interpreted strictly, in accordance with the CJEU's case law, namely at the level of individual specimens rather than at the population level.[182] This means that a breach of the said articles already occurs if there is a risk of killing one single specimen, even if overall the renewable energy project will not have significant adverse impacts at the population level. Following this strict interpretation, the above-mentioned mitigation measures fall short of ensuring compliance with Article 12(1) of the Habitats Directive and Article 5 of the Birds Directive. Instead, they generally ensure that planned activities will not hinder the maintenance or restoration of the favourable conservation status of the affected species *populations* (or their satisfactory level in the case of birds). In other words, the mitigation measures only ensure that the conditions for granting derogations to Article 12(1) of the Habitats Directive and Article 5 of the Birds Directive are met, thereby precisely acknowledging non-compliance with these two provisions.

On the other hand, RED III may also be understood as softening the strict interpretation of these two provisions, or at least changing their nature to some kind of obligations of due diligence. Indeed, a strict interpretation would seem to prevent the designation of any RAAs for offshore (and possibly also onshore) wind energy deployment altogether, as the risk of killing a single bird exists even at the project level. Second, if the mitigation measures eliminate the risk of killing a single specimen, then no breach of the relevant species protection provisions takes place to begin with, and the presumption would not be needed at all. Consequently, the compliance requirement with Articles 12(1) of the Habitats Directive and 5 of the Birds Directive would need to be interpreted more leniently to ensure the "*effet utile*" of both the presumption and the RAA regime as a whole. This is already the case in neighbouring Member States, which use population thresholds to assess compliance with the two prohibitions.[183] At a minimum, the Member State would need to ensure that the population status is not negatively affected.

Irrespective of this potential bottleneck, streamlining environmental assessment procedures may also be worth considering outside RAAs.

First, it should be noted that the requirements for streamlining environmental assessment procedures in Infrastructure Areas are less stringent than those applicable to RAAs. Regarding location, Infrastructure Areas can be designated in areas where renewable energy development is not expected to have significant environmental effects or where such effects can be duly mitigated or, where not possible, compensated for. Regarding the mitigation requirement, rules on mitigation measures established in Infrastructure Areas plans are not explicitly required to ensure compliance with any specific nature conservation obligation under RED III.

Second, some form of streamlining may also be possible outside RAAs by establishing standard mitigation measures at the strategic level. While general exemptions from EIA and AA obligations are incompatible with Article 2(1) of the EIA Directive and Article 6(3) of the Habitats Directive,[184] fine-tuning

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[182] ABRvS 16 april 2014, ECLI:NL:RVS:2014:1284; C-473/19, paras 51-53. See also Sanne Akerboom and others, 'Wind energy projects and species protection law: a comparative analysis of the application of EU law in five Member States' (2019) 28 *European Energy and Environmental Law Review* 144.

[183] Akerboom and others (n 182).

[184] C-66/06 *Commission of the European Communities v Ireland*, para 65; C-256/98 *Commission of the European Communities v French Republic*, para 39; C-241/08 *European Commission v French Republic*, para 31; C-538/09 *European Commission v Kingdom of Belgium*, para 45.

screening criteria may be possible. As mentioned above, the gap between the systematic requirement to conduct EIAs and AAs and the systematic conclusion that projects will not have significant adverse effects stems from the consideration of mitigation measures in the assessment. During the screening, mitigation measures cannot be considered, as their very purpose presupposes that significant effects are likely to occur.[185] However, standard features that are required for all projects of a given type and which are set out in a previous planning act can be considered in the screening (see box 2).[186] Defined bandwidths, standstill protocols, noise standards or similar measures may qualify as such standard features and therefore be specified in the North Sea Programme. Consequently, these standards would be considered to determine whether individual parcel decisions must be subject to additional EIAs or AAs.

Box 2: Standard Features – C-721/21 *Eco Advocacy*

49. Thus, where such elements are incorporated into the design of a project not with the aim of reducing the negative effects of that project on the site concerned, but as standard features required for all projects of the same type, those elements cannot, inter alia, be regarded as indicative of probable significant harm to that site, contrary to the measures referred to in paragraphs 46 and 47 above.

50. Subject to the verifications which it is for the referring court to carry out, it appears that the incorporation of the measures referred to in paragraph 9 above into the design of projects such as that at issue in the main proceedings is required, generally, by planning acts and that, in the case at hand, it was required by the Meath County Development Plan 2013-2019, which, moreover, has been the subject of an environmental assessment under Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30).

51. Article 6(3) of Directive 92/43, interpreted in the light of the precautionary principle, does not therefore preclude the taking into account of such measures during the screening phase of those projects. In the light of the foregoing considerations, the answer to the fourth question is that Article 6(3) of Directive 92/43 must be interpreted as meaning that, in order to determine whether it is necessary to carry out an appropriate assessment of the implications of a plan or project for a site, account may be taken of the features of that plan or project which involve the removal of contaminants and which therefore may have the effect of reducing the harmful effects of the plan or project on that site, where those features have been incorporated into that plan or project as standard features, inherent in such a plan or project, irrespective of any effect on the site.'

Recommendations

The wind areas currently identified in the North Sea Programme and the parcel decisions, including mitigation measures, together may not yet fully satisfy the requirements set out above, notably the requirement that no overlap exists with listed ecologically valuable areas such as major migratory routes. Two key actions could already facilitate the streamlining of environmental assessment procedures:

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[185] C-323/17 *People Over Wind and Peter Sweetman v Coillte Teoranta*, para 40; C-721/21 *Eco Advocacy CLG v An Bord Pleanála*, para 46.
[186] For the Court's complete reasoning on the distinction between mitigation measures and standard features, see C-721/21 *Eco Advocacy CLG v An Bord Pleanála*, paras 44-52.

1. The designation of low-conflict areas in the Dutch part of the North Sea should begin with the formal identification of major migratory routes, which must then be excluded from designation.
2. Standard mitigation measures should be more systematically integrated into the assessment of strategic plans to ensure that significant adverse effects are excluded early in the decision-making process and should then be prescribed as standard features that are required for all wind energy projects in the Dutch part of the North Sea.

3.2. Presumptions

RED III introduces three presumptions that may clarify the relationship between offshore renewable energy development and nature conservation. First, renewable energy projects are presumed to comply with key nature conservation obligations provided that they adopt the appropriate mitigation measures. These nature conservation obligations include the non-deterioration obligation of Natura 2000 sites (see section 3.2.1) and the prohibitions of deliberate killing and disturbance of protected species (see section 3.2.2). Additionally, renewable energy development is presumed to be carried out for imperative reasons of overriding public interests and serving public health and safety (as discussed in section 3.2.3 below).

3.2.1. Article 6(2) of the Habitats Directive

RED III introduces a first presumption of compliance with the obligation of non-deterioration of Natura 2000 sites set out in Article 6(2) of the Habitats Directive. Under Article 15c(1)(b), third paragraph, projects that are located within RAAs are presumed not to be in breach of Article 6(2), provided that they implement the appropriate mitigation measures that have been included in the RAA plan concerned.

This presumption contrasts with the usual interpretation of Article 6(2) of the Habitats Directive. Generally, the CJEU has held that national legislation introducing a presumption of compliance for certain activities or establishing a broad presumptive derogation is incompatible with Article 6(2).[187]

Under Article 6(2) of the Habitats Directive, Member States are required to avoid any significant deterioration and disturbances to protected sites in view of the Directive's objectives. In contrast, Article 6(3) establishes a procedural safeguard: any plan or project likely to have a significant effect on a protected site must undergo an AA to ensure it will not adversely affect the site's integrity.

In practice, the AA allows the competent authority to ensure that a plan or project complies with Article 6(2) of the Directive.[188] In RAAs, however, renewable energy projects are exempted from the AA requirement.[189] Instead, the competent authority must establish rules on the appropriate mitigation measures to be adopted by the project, at the strategic level and in the RAA plans, to ensure compliance with Article 6(2) of the Habitats Directive.[190] Consequently, projects that implement the appropriate mitigation measures are presumed to comply with Article 6(2).[191]

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[187] C-241/08 *European Commission v French Republic*, para 38; C-432/21 *European Commission v Republic of Poland*, para 103.
[188] C-127/02 *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, paras 35 and 36.
[189] RED, Art 16a(3), second paragraph.
[190] Ibid, Art 15c(1)(b), first paragraph.
[191] Ibid, Art 15c(1)(b), third paragraph.

Relevance for the Dutch part of the North Sea

In the Dutch part of the North Sea, the presumption's immediate added value is limited, as no offshore wind farm to date has been found to have a significant effect on a Natura 2000 site, individually or in combination with others.[192] However, such adverse effects cannot be a priori excluded for future developments, making the presumption potentially relevant in the long term.

The presumption's relevance to offshore wind energy in the Netherlands also depends on other considerations. First, it applies only within RAAs, making its relevance contingent on whether those areas are designated offshore in the first place. Moreover, the presumption does not generally relieve the Netherlands of its obligations under Article 6(2) of the Habitats Directive. The presumption seems to merely simplify compliance at the project level, while responsibility for overall compliance remains at the strategic level. At this level, Member States remain bound by the obligation to prevent habitat deterioration.[193] As such, simplifying compliance at the project level may even hinder the Netherlands in identifying risks of deterioration.

Bottlenecks

As Member States still seem to be bound to comply with the obligations of Article 6(2) of the Habitats Directive, the presumption does not seem to resolve the ongoing challenge where, despite a compliant appropriate assessment and the absence of any error by the competent authority under Article 6(3), a plan or project subsequently proves likely to cause habitat deterioration. In such cases, Article 6(2) seems to become applicable again to safeguard the Directive's core objective of conserving natural habitats and species.[194] The competent authority must then take the necessary steps to remedy the situation, namely, to restore the ecological characteristics of the affected Natura 2000 sites.

Under RED III, the absence of an AA at the project level risks exacerbating this challenge. Where the screening identifies unforeseen effects before the project is authorised, the developers may be allowed to implement compensatory measures to address them, as discussed below.[195] However, where unforeseen effects are not identified before the project is authorised, the Member State, bound by Article 6(2) of the Habitats Directive, will have to remedy the situation. It is not entirely clear from the text of the Directive, however, how such remedy should take place. Can a permit for a renewable energy project within a RAA still be revoked or amended (i.e. is the presumption rebuttable) or would the Member State be forced to find another solution to restore the damage? As noted in section 3.2.3 below, there are indications that the overriding interest presumption of RED III can indeed be rebutted. If this line of thought is consistently applied throughout the Directive, then it seems that the relevant permits could be amended or revoked as well, provided that there is clear scientific evidence that the projects concerned are causing deterioration of the site. Another uncertainty concerns a situation where a cumulation of smaller effects ultimately leads to significant deterioration: if deterioration is caused by multiple projects and/or natural events, does the presumption then entail some sort of hierarchy whereby renewable energy projects within RAAs are to be addressed last? As renewable energy projects would be legally presumed not to be in breach of the non-deterioration principle, would

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[192] See, e.g., Parcel Decision Borssele I, pp. 41-42; Parcel Decision HK (South) II, p. 53; Parcel Decision IJmuiden Ver Alpha, p. 67; Parcel Decision Nederwiek (South) I-A, p. 69.
[193] See C-141/14 *European Commission v Republic of Bulgaria*, para 56; C-461/14 *European Commission v Kingdom of Spain*, para 94.
[194] C-127/02 *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, para 37.
[195] RED, Art 16a(5), second and third paragraphs.

other types of projects or activities, which do not benefit from such a presumption, such as fisheries, need to compensate for the total deterioration, insofar as they also contribute to it? Or do Member States still retain their usual margin of discretion when deciding how to meet their obligations under Article 6(2)? The answers to these questions matter significantly for the future of the energy transition and for the balancing of interests in the marine environment.

3.2.2. Non-Deliberate killing and disturbance of protected species

RED III introduces a second presumption of compliance regarding the deliberate killing and disturbance of species that are protected under the Habitats Directive and the Birds Directive. This presumption applies to any renewable energy project that implements the appropriate mitigation measures. However, the wording of the presumption differs depending on whether the project is located within or outside RAAs.

Within RAAs

Under Article 15c(1)(b), third paragraph of RED, a project is presumed not to be in breach of Article 12(1) of the Habitats Directive and Article 5 of the Birds Directive provided that it has implemented the appropriate mitigation measures that have been identified in the RAA plan of the area in which it is located. In other words, such a project is presumed not to cause the deliberate killing or disturbance of birds and other protected species.

Outside RAAs

Under Article 16b(2) of RED, where a renewable energy project has adopted "necessary mitigation measures", any killing or disturbance of the species protected under Article 12(1) of the Habitats Directive and Article 5 of the Birds Directive shall not be considered to be deliberate. In other words, such a project must be considered not to be in breach of these two provisions.

Hence, the two presumptions share the same scope and content, despite different wording. What matters is that the project has adopted the necessary or appropriate mitigation measures.

Mitigation measures

In all cases, the presumption depends on the adoption of the necessary or appropriate mitigation measures.

Within RAAs and Infrastructure Areas, the appropriate mitigation measures refer to those pre-identified by the competent authorities.[196] The presumption is the logical consequence of streamlining environmental assessment procedures and pre-establishing rules on mitigation measures. As mentioned above, Member States are required to establish a mitigation rulebook for each RAA and infrastructure area they designate. In RAAs, these rules must ensure that 'appropriate mitigation measures are applied in a proportionate and timely manner to ensure compliance' with the obligations laid down in Article 12(1) of the Habitats Directive and Article 5 of the Birds Directive.[197] Additionally, RED III specifies that such rules must be targeted to the specificities of each identified RAA, to the type or types of renewable energy technology to be deployed in each area and to the identified environmental impact.[198]

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[196] RED, Art 15c(1)(b), first paragraph and 15e(1)(e).
[197] Ibid, Art 15c(1)(b), first paragraph.
[198] Ibid, Art 15c(1)(b), second paragraph.

Outside RAAs and Infrastructure Areas, what constitutes 'necessary' mitigation measures remains unclear, as such measures are not pre-identified by the competent authority.

Novel mitigation measures

Additionally, under RED III, Member States may allow the use of novel mitigation measures to prevent, to the extent possible, the killing or disturbance of species protected under the Habitats Directive and the Birds Directive, or any other environmental impact.[199] Novel mitigation measures refer to measures whose effectiveness has not been widely tested.

As a possible derogation from the way the CJEU has interpreted and applied the precautionary principle in the context of EU nature conservation law, this option must be interpreted restrictively. RED III specifies that such measures may be authorised only for one or several pilot projects, for a limited time period, and only where their effectiveness is closely monitored and immediate corrective action is taken if they prove ineffective.[200] When it comes to the reference to "any other environmental impact", however, multiple interpretations are possible. A broad and literal interpretation would suggest that the provision also includes impacts on Natura 2000 sites. A restrictive interpretation, on the other hand, would suggest that the application of novel mitigation measures should instead be confined to other impacts on protected species within the meaning of Article 5 of the Birds Directive and Article 12(1) of the Habitats Directive, such as the deterioration or destruction of breeding sites or resting places. The latter interpretation would preclude the consideration of novel mitigation measures under Article 6(3) of the Habitats Directive, thereby ensuring consistency with the CJEU's existing case law, which requires that such measures be described in detail and supported by definitive data demonstrating their effectiveness at the time of authorisation.[201]

Even though they are interpreted restrictively, allowing novel mitigation measures represents a significant departure from the strict species protection regimes established under the Birds and Habitats Directives. In particular with regard to Article 5 of the Birds Directive, the CJEU has held that the prohibitions cannot be suspended or limited in time.[202] By allowing the use of not fully proven mitigation measures for a limited period, a Member State could, in practice, temporarily reduce the level of protection guaranteed by those provisions, since such measures may fail to prevent killing or disturbance of protected species. It is therefore essential that the implementation of novel mitigation measures is closely monitored and that immediate remedial steps be taken when they prove ineffective.

Relevance to the Dutch part of the North Sea

The relevance of this presumption needs to be nuanced in the context of the Dutch part of the North Sea.

As highlighted above, current mitigation measures may not fully ensure compliance with Article 5 of the Birds Directive or Article 12(1) of the Habitats Directive, as interpreted strictly by the CJEU, but rather with the conditions for granting derogations from these two provisions.

In any event, the effect of such a presumption will most likely be limited in practice. Currently, exemptions from the obligation to obtain a separate permit in relation to species protection law are

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[199] Ibid, Art 15c(b), third paragraph and Art 16b(2).
[200] Ibid.
[201] C-142/16 *European Commission v Federal Republic of Germany*, paras 37–45
[202] C-252/85 *Commission of the European Communities v French Republic*, para 9; C-507/04 *Commission of the European Communities v Republic of Austria*, paras 113-115.

systematically granted in parcel decisions on the condition that the project implements the identified mitigation measures, which ensure that the conservation status of the affected species is not at stake. As a derogation from general law, the presumption should, in no way, be interpreted as allowing a deterioration of the conservation status of the affected species,[203] which would contravene the objectives of the Habitats Directive and the Birds Directive. Thus, it is likely that 'necessary' mitigation measures would need to ensure that a project is not detrimental to the conservation status of affected species, at the very least.

3.2.3. Overriding public interest, public health, and safety

Finally, RED III introduces a presumption that renewable energy developments are carried out for imperative reasons of overriding public interest and serving public health and safety, until climate neutrality is achieved. While broad in scope, the presumption does not seem to be unlimited, and its relevance may be marginal in practice given current developments in relation to renewable energy in the Dutch part of the North Sea.

Limited scope

Member States must ensure that this presumption applies in planning and permitting procedures when balancing legal interests in individual cases under Article 6(4) and Article 16(1)(c) of the Habitats Directive, Article 4(7) of the Water Framework Directive and Article 9(1)(a) of the Birds Directive. These provisions include the granting of derogations from species and habitat protection obligations.

As previously noted, the presumption does not explicitly apply to exceptions granted under Article 14(1)(e) of the Marine Strategy Framework Directive (MSFD).[204] However, Article 14(1)(e) MSFD is not relevant for granting permits for projects, but only provides a possible justification for Member States not receiving a good environmental status on Member State level.

Member States may also restrict the application of the presumption to certain parts of their territory, specific technologies, or projects with defined technical characteristics, provided that they notify the Commission of their decision and the underlying justification.[205] RED III's preamble offers some guidance in that respect:

> Member States should presume those renewable energy plants and their related infrastructure to be of overriding public interest and serving public health and safety, except where there is clear evidence that those projects have significant adverse effects on the environment which cannot be mitigated or compensated for, or where Member States decide to restrict the application of that presumption in duly justified and specific circumstances, such as reasons related to national defence.[206]

Rebuttable presumption

The presumption also seems to be rebuttable, meaning it can be disputed. This is suggested by the preamble recital cited in the previous paragraph, as well as by the interpretation of a similar

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[203] This seems to follow, for example, from RED III preamble recital 37 which requires Member States (insofar as preamble recitals can do so) to assess the effectiveness of the measures 'through appropriate monitoring and, in the light of the information gathered, to take further measures as required to ensure that there are no significant adverse impact on the population of the species concerned'.
[204] Directive 2008/56/EEC.
[205] RED, Art 16f.
[206] RED III, Recital 44.

presumption under the temporary Council Regulation 2022/2577, which intended to lay down a framework to accelerate the deployment of renewable energy until a more permanent instrument was adopted to this end, i.e. RED III.[207] The Commission highlighted in a report relating to this regulation that the presumption is rebuttable, meaning that 'permitting authorities and courts can disapply it where there is clear evidence that those projects have major adverse effects on the environment which cannot be mitigated or compensated for'.[208]

Irrespective of its nature, the presumption only facilitates the assessment of the conditions for granting derogations under the Habitats and Birds Directives. It does not impose a duty on the competent authority to grant such derogations. It falls within the discretion of the competent authority to weigh up the different interests at stake. In other words, a permit can still be refused even if all conditions under Article 6(4) of the Habitats Directive, for instance, are met.

Relevance to the Dutch North Sea

In practice, the presumption is not expected to significantly affect offshore renewable energy developments in the Dutch part of the North Sea, especially for large infrastructures of national interest. Offshore wind energy developments have systematically been considered to be carried out in the overriding public interest and to serve public health and safety in all parcel decisions to date.[209] Dutch courts, including the Council of State, have also acknowledged that renewable energy projects, and the energy transition at large, were, or at the very least could be, of such a character as to constitute an overriding public interest or serve public health and safety.[210] Dutch offshore wind farms therefore already used to benefit from a relatively favourable application of the derogation requirement.

The presumption is furthermore not unlimited. As mentioned above, the presumption does not explicitly apply to the Marine Strategy Framework Directive, which includes an indicator on ecological biodiversity. The presumption also seems to be rebuttable. More importantly, even if a renewable energy project is presumed to be of overriding public interest, this does not mean that its negative effects on the environment should automatically be accepted. The competent authority still has to weigh the public interest and the environmental harm caused, especially in cases where a renewable energy development is likely to cause irreparable ecological damage.

3.3. Unforeseen Effects and (Monetary) Compensation

Finally, RED creates a new system: under specific circumstances, significant adverse environmental effects may be compensated for financially.[211] The Directive acknowledges that not all adverse environmental effects can be identified at the strategic level and, therefore, considers that unforeseen effects should not disproportionately hinder the permitting of projects in previously assessed low-

[207] Regulation 2022/2577 laying down a framework to accelerate the deployment of renewable energy, Art 3.
[208] European Commission, 'Report from the Commission to the Council on the review of Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy' COM(2023) 764 final, p. 9.
[209] Parcel Decision IJmuiden Ver Beta, p. 62-64; Parcel Decision IJmuiden Ver Alpha, pp. 62-64; Parcel Decision HK (West) VII, pp. 57-58; Parcel Decision HK (West) VI, pp. 58-59; Parcel Decision HK (North) V, pp. 56-57; Parcel Decision HK (South) IV, pp. 49-50; Parcel Decision HK (South) III, p. 49-50; Parcel Decision HK (South) II, pp. 41-42; Parcel Decision HK (South) I, pp. 42-43; Parcel Decision Borssele V, pp. 36-37; Parcel Decision Borssele IV, pp. 36-38; Parcel Decision Borssele III, pp. 36-38; Parcel Decision Borssele II, pp. 37-38; Parcel Decision Borssele I, pp. 37-39.
[210] See e.g. the cases ABRvS 18 February 2015 ECLI:NL:RVS:2015:438, para 9.4; ABRvS 4 May 2016 ECLI:NL:RVS:2016:1227, para 7.2; ABRvS 4 November 2020 ECLI:NL:RVS:2020:2621, para 13.
[211] RED, Art 15e(4) and 16a(5).

conflict areas.[212] In such cases, subject to the condition that there are no proportionate mitigation measures that can prevent or minimise the effects and that no other proportionate compensation measures exist, financial compensation may be permitted as a last resort option.

Importantly, monetary compensation is not intended to become the new standard in EU nature conservation law. Its scope of application remains narrowly defined under RED III, making it a last-resort option. Where applicable, however, it represents a significant departure from the general legal framework governing the conservation of Natura 2000 sites. Normally, compensation must be carried out in kind and is often limited to the granting of derogations under Article 6(4) of the Habitats Directive.[213] That said, the practical impact of this legal innovation should be viewed with nuance, particularly regarding renewable energy developments in the Dutch part of the North Sea.

Last-Resort Option

Monetary compensation is a solution to address unforeseen significant environmental effects that may arise from streamlining environmental assessment procedures in designated RAAs and infrastructure areas. As outlined above, environmental assessments are simplified within RAAs and infrastructure areas and, in principle, limited to a screening process at the project level.[214] Monetary compensation is designed to address significant adverse effects identified only during such screening – effects that would otherwise trigger a full EIA and AA.[215]

This mechanism applies only to grid or storage projects that are located in Infrastructure Areas, or to wind and solar photovoltaic projects within RAAs that have been exempted from the obligation to undergo further environmental assessments, even when such projects are highly likely to give rise to significant unforeseen adverse effects.[216] In these cases, the developer must adopt appropriate and proportionate mitigation measures to avoid, or at least significantly reduce, the identified unforeseen effects.[217] Where such mitigation measures exist and are applied, the project is presumed to comply with the various nature conservation obligations discussed above. RED III facilitates the granting of such derogations by explicitly allowing the developer to adopt compensatory measures in that situation, which, if no other proportionate options exist, may even take the form of monetary compensation.[218]

Monetary compensation thus functions strictly as a measure of last resort. It allows certain projects to proceed despite their potential to cause unforeseen significant adverse effects.[219] Under the Nature Directives, such projects can only be authorised through specific derogations, depending on the type

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[212] See, e.g., RED III, Recital 46, last sentence: 'In the case of compensatory measures, the project development can be pursued while compensatory measures are being identified.'
[213] Compensation is explicitly required for granting derogations under Article 6(4) of the Habitats Directive. Compensation is not required for granting derogations under Article 16(1) of the Habitats Directive and Article 5 of the Birds Directive. Still, it can be considered to offset the detrimental impact on the conservation status of the species concerned. See European Commission (2021) 'Guidance document on the strict protection of animal species of Community interest under the Habitats Directive' COM (2021) 7301 final, p. 70.
[214] RED, Art 15e(3) and 16a(4).
[215] Ibid, Art 15e(4) and 16a(5).
[216] Ibid.
[217] Ibid.
[218] Ibid.
[219] Ibid, Art 16a(5) and, implicitly, Art 15e(4).

of environmental harm involved.[220] These derogations are subject to strict conditions, which can be fulfilled through compensation to some extent:

- *Article 6(4) of the Habitats Directive* – derogations are explicitly subject to, among others, the condition that the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected.
- *Article 16(1) of the Habitats Directive* – derogations are permitted only where they are not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status within their natural range. In practice, this condition can be met by adopting compensation measures to ensure or improve the conservation status of the affected species.[221]
- *Article 9(1) of the Birds Directive* – while derogations are not explicitly subject to the condition that the activity or project does not negatively affect the maintenance of the affected species population, the CJEU has frequently referred to such a condition when it ruled on the legality of derogations. For instance, the 'small numbers' condition set out in Article 9(1)(c) can only be met if it ensures the maintenance of the population of the species concerned at a satisfactory level.[222] The CJEU also stated that:

> derogations under Article 9 of the Birds Directive may be granted only if it is ensured that the population of the species concerned is maintained at a 'satisfactory level' and, if that condition is not fulfilled, hunting of birds cannot, in any event, be considered to be judicious and, accordingly, acceptable.[223]

On the one hand, RED III seems to uphold the objectives of the two Nature Directives by maintaining a requirement to compensate for significant adverse effects on protected sites or species. On the other hand, it also seems to weaken species and habitat protection regimes by explicitly allowing developers to use monetary compensation as a last resort.[224] But to what extent does this last-resort option constitute a substantial departure from the conditions generally applicable to nature conservation derogation under the Habitats Directive and the Birds Directive, and how relevant will it be for offshore wind development in the Dutch part of the North Sea?

Natura 2000 sites

For wind and solar photovoltaic projects within RAAs, and only within RAAs, financial compensation may first be applied to address unforeseen adverse effects on the integrity of a Natura 2000 site.[225]

The possibility of such financial compensation departs significantly from the usual interpretation and application of Article 6(4) of the Habitats Directive. Payments to individuals or towards special funds, regardless of whether or not these are ultimately allocated to nature conservation projects, are generally considered not suitable under the Habitats Directive.[226] Where such monetary measures were

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[220] Habitats Directive, Art 6(4) and 16(1); Birds Directive, Art 9.
[221] European Commission (n 213) p. 70.
[222] C-557/15 *European Commission v Republic of Malta*, para 66.
[223] C-217/19 *European Commission v Republic of Finland*, para. 68. The Court also made a cross-reference to its case-law on derogations under Article 16 of the Habitats Directive in C-674/17 *Luonnonsuojeluyhdistys Tapiola Pohjois-Savo – Kainuu ry v Risto Mustonen and Others*, para 84.
[224] RED, Art 15e(4) and 16a(5).
[225] Ibid, Art 16a(5). Regarding infrastructure areas, the literal wording of Article 15e(4) of the Directive appears to limit monetary compensation to species protection alone, thereby excluding effects on Natura 2000 sites.
[226] European Commission, 'Managing Natura 2000 sites – The provisions of Article 6 of the "Habitats" Directive 92/43/EEC' COM (2018) 7621 final, p. 62.

to be adopted to compensate for the adverse effects on the integrity of a Natura 2000 site, they should ensure the overall coherence of Natura 2000 is maintained, as generally required for derogations granted under Article 6(4) of the Habitats Directive.

Additionally, under Article 16a(5) of RED, the responsibility for taking compensation measures seems to shift from the Member State – under Article 6(4) of the Habitats Directive – to the operator, who 'shall adopt proportionate mitigation measures or, where such mitigation measures are not available, compensatory measures, which, if other proportionate compensatory measures are not available, may take the form of monetary compensation, in order to address any adverse effects.' In practice, however, such a shift must be nuanced. In accordance with the polluter-pays principle, the project developer generally already bears the costs of compensatory measures.[227] However, the actual implementation of these measures often lies beyond the developer's direct control, as it largely depends on third parties, such as the owners of suitable compensation sites or the competent authority. Consequently, the responsibility for the cost and for the adoption of compensatory measures has always differed and is unlikely to be supported solely on the operator.

Protected species

For wind and solar photovoltaic projects within RAAs, as well as for grid and storage projects within infrastructure areas, financial compensation may be applied to address unforeseen adverse effects on birds and other protected species under the Habitats Directive and the Birds Directive.[228] Under Article 16 of the Habitats Directive and, to some extent, as mentioned above, under Article 9 of the Birds Directive, a project can only be authorized despite the deliberate killing or disturbance of birds and other protected species, provided that the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range. Compensation measures are not explicitly mentioned in either provision. They are therefore not a necessary condition for a derogation.[229] As discussed above, however, compensatory measures may be considered to ensure compliance with the maintenance of the populations of the species concerned at a favourable conservation status in their natural range. This, however, is only possible if these compensatory measures actually lead to ecological improvement, ensuring the favourable conservation status. Financial compensation, therefore, is not an adequate means to comply with Article 16 (1) of the Habitats Directive. Consequently, the possibility of financially compensating for adverse effects on protected species under RED III significantly departs from Article 16 of the Habitats Directive and Article 9 of the Birds Directive. Although RED III explicitly requires that, where no other compensation measure is available, the operator 'pay a monetary compensation for species protection programs (...) *to ensure or improve the conservation status of the species affected.*'[230] Therefore, the means raised by financial compensation must (at least) be used to improve the conservation status. However, this financial compensation does not need to ensure that the favourable conservation status is upheld, as Article 16 (1) of the Habitats Directive would require. Furthermore, RED III adds that for projects located within RAAs, such compensation shall be paid (only) for the duration of the renewable energy plant's operation.[231]

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[227] Ibid 66; Jacqueline Zijlmans and Hans Woldendorp 'Compensation and Mitigation: Tinkering with Natura 2000 Protection Law' (2014) 10(2) Utrecht Law Review 172, p. 188.
[228] RED, Art 15e(4) and 16a(5).
[229] See C-131/24 *Umweltorganisation VIRUS – Verein Projektwerkstatt für Umwelt und Soziales and Others*, Opinion AG Kokott, para 48; European Commission (n 226) p. 70.
[230] RED, Art 15e(4) and 16a(5)
[231] Ibid.

Finally, while in RAAs, the operator is directly responsible under RED III for taking such compensatory measures; in infrastructure areas, the competent authority must ensure that the operator adopts the appropriate compensatory measures.[232]

Dutch part of the North Sea

Currently, providing compensation has not been a mainstream practice in the Dutch offshore wind energy sector.[233] First, all parcel decisions to date have consistently concluded that adverse effects on the integrity of adjacent Natura 2000 sites could be excluded, thereby not requiring compensation measures under Article 6(4) of the Habitats Directive.[234] Additionally, the populations of affected species have been systematically assessed to remain in a favourable conservation status within their natural range through the application of mitigation measures, without requiring separate compensatory measures for granting derogations under Article 9 of the Birds Directive and Article 16 of the Habitats Directive.[235]

This situation may, however, change in the future, particularly after the implementation of the 2032 offshore wind energy roadmap. The favourable conservation status of affected species is currently ensured for developments up to 2032, taking into account the cumulative effects of all projects planned and realised both nationally and internationally.[236] Yet, each additional project narrows the remaining margin between the cumulative impact on a species and its ecological carrying capacity. As the North Sea becomes increasingly crowded, as additional wind areas are designated, and environmental conditions further deteriorate, the need for compensation measures is likely to grow. Under the new RED III framework, developers will, in limited circumstances, be able to make monetary payments to meet their compensation obligations.

Such a financial compensation system has a clear practical advantage. It could facilitate a clustered approach, whereby compensation for multiple projects is combined into a single, larger restoration initiative. Such an approach may prove more effective for biodiversity outcomes than creating fragmented patches of compensated nature, as recognised by the Dutch government itself.[237] However, clustered compensation also raises practical challenges. If post-implementation monitoring reveals that the measures are less effective than anticipated – as has been the case, for instance, with the Tweede Maasvlakte project[238] – questions arise about how additional costs should be shared. Should these be distributed equally among all project developers, or proportionally, with larger or more environmentally impactful projects bearing a greater share of the burden?

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[232] Ibid.

[233] Which seems to be in line with a general trend that has been identified in the Netherlands in the past. See, e.g., Zijlmans and Woldendorp (n 227) 185.

[234] See, e.g., Parcel Decision Borssele I, pp. 41-42; Parcel Decision HK (South) II, p. 53; Parcel Decision IJmuiden Ver Alpha, p. 67; Parcel Decision Nederwiek (South) I-A, p. 69.

[235] This can be found in Sections 7.5.7 or 7.5.8 of plot decisions. E.g., Parcel Decision Borssele I, pp. 39-40; Parcel Decision HK (South) II, pp. 50-51; Parcel Decision IJmuiden Ver Alpha, pp. 66-67; Parcel Decision Nederwiek (South) I-A, pp. 64-65.

[236] To date, the (positive) results of the EIAs and AA have been based on the *KEC* 4.0 or earlier versions. The *KEC* is a framework for assessing the cumulative effects on populations of protected species when achieving the objectives for offshore wind energy. The latest version (*KEC* 4.0) examines the ecological effects of various rollout scenarios up to around 2030, as well as the wind farm developments in the North Sea by neighbouring countries during the same period.

[237] Bill for implementing RED III, p. 12.

[238] See *Vereniging tot Behoud van Natuurmonumenten in Nederland v de minister voor Natuur en Stikstof*, 15 November 2022, ECLI:NL:RBMNE:2022:4557.

However, such an advantage also needs to be nuanced. In RAAs, RED III only allows *unforeseen* effects at the project level to be compensated for. Other foreseeable effects at the strategic level will always need to be duly mitigated. In infrastructure, RED III seems to explicitly authorise compensating for foreseeable effects where proportionate mitigation measures are not available.

Bottlenecks

Two particular challenges remain regarding the identification of adequate compensation measures and their effective implementation.

First, under RED III, compensatory measures, including monetary ones, are intended to address unforeseen significant effects without prior EIA or AA. However, as highlighted by the CJEU in relation to Article 6(4) of the Habitats Directive, 'in order to determine the nature of any compensatory measures, the damage to the site [or the affected species] must be precisely identified.'[239] Thus, it remains unclear how adequate compensatory measures will be identified without prior assessment of the unforeseen adverse effects.

Second, research has shown that all stages of the compensation process are vulnerable to error—from biased impact assessments that underestimate environmental harm or overstate compensatory outcomes, to delays in implementation and insufficient monitoring of compensation measures.[240] Entrusting the planning, implementation, management, and oversight of compensation to an independent entity (one without a vested interest in the payment amounts), as envisioned in RED III, could improve transparency and effectiveness. The success of such an approach, however, would depend on the attitude, expertise, and resources of the responsible authority.

Recommendations

Two key actions could facilitate the identification of adequate compensation measures and their effective implementation:

1) Designating one or multiple third, relatively independent actors, such as a species protection programme, responsible for the effective implementation of the compensatory measure.
2) Identifying compensatory measures should, as much as possible, follow existing criteria outlined in the Commission's guidance on compensatory measures:[241]
    a. Targeted compensation
    b. Effective compensation
    c. Technical feasibility
    d. Extent of compensation
    e. Location
    f. Timing
    g. Long-term implementation

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[239] C-304/05 *Commission of the European Communities v Italian Republic*, para. 83.
[240] See e.g. Donald McGillivray, 'Compensating Biodiversity Loss: The EU Commission's Approach to Compensation under Article 6 of the Habitats Directive' (2012) 24 Journal of Environmental Law 417; S.J. van Leeuwen and others, 'Compensatie van schade aan natuurgebieden: vervolgonderzoek naar de bescherming van natuurgebieden' (Algemene Rekenkamer 2014).
[241] European Commission (n 226) p. 62.

Conclusion

The implementation of RED III in the Dutch part of the North Sea is both a catalyst and a constraint: it creates new legal tools to accelerate deployment, yet it does not seem to loosen many of the EU's nature protection standards to which the Netherlands remains bound. The Directive's ambition to accelerate renewable energy deployment through streamlined planning and permitting must be reconciled with the Netherlands' existing, already efficient framework for offshore wind energy. The current Dutch regime, centred on the Offshore Wind Energy Act and the Environment and Planning Act, already delivers a highly coordinated, one-stop-shop system. Still, meeting RED III's stricter time limits and front-loaded assessment model will require targeted legislative and administrative refinement, not complete redesign.

The report concludes that the designation of RAAs and Infrastructure Areas may be legally and scientifically challenging in the Dutch part of the North Sea, in light of the existing practice. Current knowledge gaps regarding the cumulative effects of offshore wind energy on the North Sea ecosystem and various protected species, combined with strict location and mitigation requirements under RED III have to be taken into account if the Netherlands wants to designate RAAs at sea.

Nonetheless, RED III offers potentially valuable mechanisms to identify and address significant adverse effects at a strategic level, thereby minimising the risk of unforeseen effects later in the decision-making process and simplifying compliance with nature conservation law obligations at the project level.

Streamlined environmental assessments could build upon the existing practice by elevating the designation of mitigation measures currently set out in parcel decisions to a more strategic level—potentially within the framework of a revised North Sea Programme, coupled with rigorous plan-level SEA/AA and mandatory project-stage screening for unforeseen and transboundary effects. Such integration would allow pre-established location and mitigation conditions to form the environmental basis for subsequent authorisations, while maintaining the high level of protection required by EU law.

The introduction of presumptions under RED III, relating to compliance with the Habitats and Birds Directives, and to overriding public interest and of public health and safety, offers both opportunities and risks. While these presumptions may simplify project-level authorisations, their practical application must be carefully calibrated to ensure continued compliance with the Netherlands' general obligations under EU nature legislation.

The Directive's mechanism for addressing unforeseen adverse effects through financial compensation represents a significant departure from other EU law. While it offers flexibility in managing residual unforeseen environmental effects, its strict conditions — limited scope and last-resort nature — raise both legal and methodological questions that must be resolved before implementation.

In sum, while RED III's legal innovations align with the Netherlands' broader ambitions for an accelerated energy transition, their integration into the Dutch North Sea context will demand careful legal, ecological, and institutional consideration. By providing concrete recommendations, this report aims at assisting legislators and policymakers to take into account the most pressing concerns to accelerate the development of renewable energy within the safe ecological limits of the North Sea.

Annex: RAA Implementation Options